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Attorneys for Plaintiff,
DONNA CORBELLO

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONNA CORBELLO, an individual,

PLAINTIFF,

vs.

THOMAS GAETANO DEVITO, FRANKIE
VALLI, ROBERT J. GAUDIO,
MARSHALL BRICKMAN, ERIC S. ELICE
a/k/a RICK ELICE, DES McANUFF, and
MICHAEL S. DAVID, all individuals, and,
DSHT, INC. (formerly, "DODGER STAGE
HOLDING THEATRICALS, INC.), a
Delaware corporation; DODGER
THEATRICALS, LTD., a New York
corporation; JB VIVA VEGAS, LP,
JERSEY BOYS BROADWAY LIMITED
PARTNERSHIP, and JERSEY BOYS
RECORDS LIMITED PARTNERSHIP, all
New York limited partnerships; SKUNK,
INC., a New York corporation; and
GETTING HOME, INC., a Nevada
corporation,

DEFENDANTS.

CASE NO. 2:08-cv-00867-RCJ-PAL

**PLAINTIFF'S THIRD AMENDED
COMPLAINT FOR DECLARATORY
JUDGMENT; ACCOUNTING;
BREACH OF CONTRACT; UNJUST
ENRICHMENT; BREACH OF
IMPLIED COVENANT OF GOOD
FAITH; CONSTRUCTIVE FRAUD;
FRAUD; FRAUDULENT
CONCEALMENT; CONVERSION;
COPYRIGHT INFRINGEMENT,
CONTRIBUTORY COPYRIGHT
INFRINGEMENT AND FOREIGN
COPYRIGHT INFRINGEMENT,
SEEKING DECLARATORY,
MONETARY AND INJUNCTIVE
RELIEF, INCLUDING
CONSTRUCTIVE TRUSTS**

JURY DEMAND

1 Plaintiff, Donna Corbello, by her attorneys, and pursuant to, *inter alia*, Fed. R. Civ. P.
2 15(a)(2), 8(d)(2)-(3), 19(a)(1) and/or 20(a)(2), 17 U.S.C. § 501(b), and the Court's *Order* (Doc. 351)
3 of December 10, 2010, hereby alleges the following for her *Third Amended Complaint* against the
4 above-named Defendants:

5 **BASIS FOR FEDERAL JURISDICTION**

6 **[Local Rule 8-1]**

7 1. This Court has subject matter jurisdiction over this action, under 28 U.S.C. § 1338(a)
8 [actions arising under Acts of Congress relating to copyrights]; 28 U.S.C. § 1331 [actions arising
9 under the Constitution, laws or treaties of the U.S.], and 28 U.S.C. § 1367(a) [supplemental
10 jurisdiction over related claims, including claims involving joinder of parties and foreign copyright
11 infringement claims]. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(a)(1),
12 in that the parties are citizens of different States; the amount in controversy exceeds \$75,000.00 as
13 to each Defendant, exclusive of interest and costs, and the exercise of supplemental jurisdiction
14 under 28 U.S.C. § 1367(a) is consistent with the jurisdictional requirements of 28 U.S.C. § 1332,
15 in accordance with 28 U.S.C. § 1367(b).

16 **THE PARTIES**

17 2. Plaintiff, Donna Corbello, an individual, domiciled in College Station, Texas, is the
18 widow and heir of Rex Conrad Woodard, who authored an unpublished, biographical work regarding
19 Defendant DeVito and the pop group, the Four Seasons (the "Work") in Beaumont, Texas, which
20 was completed shortly before his death in 1991. Plaintiff inherited Mr. Woodard's rights in the
21 Work and is his successor in an agreement with Defendant DeVito regarding same.

22 3. Defendant, Thomas Gaetano DeVito ("DeVito"), an individual, domiciled in Las
23 Vegas, Nevada, was an original member of the Four Seasons, serving, *inter alia*, as lead guitarist and
24 baritone vocalist, and formed the Variety Trio, the Varietones, and the Four Lovers, its predecessor
25 groups. Defendant DeVito participated with Mr. Woodard in the creation and revision of the Work;
26 entered into an agreement with Mr. Woodard regarding the Work; transacted business with Mr.
27 Woodard and his heirs concerning the Work; and, years following Mr. Woodard's death, issued an
28 "exclusive license" encompassing the Work to Defendants Frankie Valli and Robert J. Gaudio, who

1 subsequently sublicensed and/or transferred said rights, or portions thereof, to the remaining
2 Defendants herein (ultimately assigning same to Defendants, DSHT, Inc. and/or Dodger Theatricals,
3 Ltd., which in turn, assigned same to Jersey Boys Broadway Limited Partnership), leading to the
4 Work's use and adaptation for the musical production, *Jersey Boys*, as Defendant DeVito actively
5 concealed these facts from Plaintiff.

6 4. Defendant, Frankie Valli ("Valli"), an individual, domiciled in Calabasas, California,
7 was an original member of the Four Seasons, serving as lead vocalist therefor; was a member of the
8 Varietones and the Four Lovers, its predecessor groups; and, continues to perform with a modern
9 version of the Four Seasons. Defendant Valli is a party to an agreement with Defendant DeVito
10 which purports to transfer certain exclusive rights in the Work to Defendant Valli and Defendant,
11 Robert J. Gaudio, and Defendant Valli, with Defendant Gaudio, further licensed and/or transferred
12 these rights, or portions thereof, to the remaining Defendants herein (ultimately assigning same to
13 Defendants DSHT, Inc. and/or Dodger Theatricals, Ltd., which in turn, assigned same to Jersey Boys
14 Broadway Limited Partnership), resulting in the use and adaptation of the Work for *Jersey Boys*, and
15 collateral products, and the distribution of copies thereof. Upon information and belief, Valli and
16 Gaudio are involved in a longstanding, informal partnership and/or joint venture, occasionally doing
17 business as "The Four Seasons Partnership," which operates from an office in Santa Monica,
18 California.

19 5. Defendant, Robert J. Gaudio ("Gaudio"), an individual, domiciled in Nashville,
20 Tennessee, was also an original member of the Four Seasons, serving as a vocalist, principal
21 composer and keyboard player, and frequently, as arranger and producer for the group, and was a
22 member of the Four Lovers, its predecessor group. Defendant Gaudio is named, with Defendant
23 Valli, as an exclusive licensee of certain rights in the Work under an agreement with Defendant
24 DeVito, and Gaudio, with Valli, further licensed and/or assigned these rights, or portions thereof,
25 to the remaining Defendants herein (ultimately assigning same to Defendants DSHT, Inc. and/or
26 Dodger Theatricals, Ltd., which in turn, assigned same to Jersey Boys Broadway Limited
27 Partnership), resulting in the use and adaptation of the Work for *Jersey Boys*, and collateral products,
28 and in the distribution of copies thereof. Upon information and belief, Defendant Gaudio is involved

1 in a longstanding, informal partnership and/or joint venture with Defendant Valli, occasionally doing
2 business as “The Four Seasons Partnership,” which operates from an office in Santa Monica,
3 California. Defendants Gaudio and Valli are sometimes referred to collectively hereinafter as “the
4 Four Seasons Partnership.”

5 6. Defendant, Marshall Brickman (“Brickman”), an individual, domiciled in New York,
6 New York, is a musician, writer, and screenwriter, who co-authored the *libretto* for *Jersey Boys* with
7 Defendant Eric S. Elice, and used and adapted the Work therefor, in concert with Defendant Des
8 McAnuff, by authorization of Defendants Gaudio and Valli, pursuant to the “exclusive license”
9 issued by Defendant DeVito thereto; by authorization of Defendant DSHT, Inc., under a secondary
10 “exclusive license” and/or assignment from the Four Seasons Partnership; by authorization of
11 Defendant Dodger Theatricals, Ltd., under a further sublicense, lease, and/or assignment from
12 Defendant DSHT, Inc. and/or Defendants Valli and Gaudio, and/or by authorization of Defendant,
13 Jersey Boys Broadway Limited Partnership, under an assignment from Defendant Dodger
14 Theatricals, Ltd.

15 7. Defendant, Eric S. Elice, a/k/a Rick Elice (“Elice”), an individual, upon information
16 and belief domiciled in New York, New York, is a writer, director, producer, performer, and a
17 creative consultant for Walt Disney Studios, who co-authored the *libretto* for *Jersey Boys* with
18 Defendant Brickman, using and adapting the Work in connection therewith, in concert with
19 Defendant, Des McAnuff, by authorization of Defendants Gaudio and Valli, under the “exclusive
20 license” issued by Defendant DeVito thereto; by authorization of Defendant DSHT, Inc., under a
21 secondary “exclusive license” and/or assignment from the Four Seasons Partnership; by
22 authorization of Defendant, Dodger Theatricals, Ltd., under a further license, lease, and/or
23 assignment from Defendant DSHT, Inc. and/or Defendants Valli and Gaudio, and/or by authorization
24 of Defendant, Jersey Boys Broadway Limited Partnership, under an assignment from Defendant
25 Dodger Theatricals, Ltd.

26 8. Defendant, Des McAnuff, an individual, domiciled in New York, New York, is a
27 founder member of Defendant Dodger Theatricals Ltd., and an award-winning director of Broadway
28 musical productions, who staged and directed *Jersey Boys*, and used, referenced, and adapted the

1 Work in connection therewith, along with Defendants Brickman and Elice, by authorization of
2 Defendants Gaudio and Valli, under the “exclusive license” issued by Defendant DeVito thereto; by
3 authorization of Defendant DSHT, Inc., under a secondary “exclusive license” and/or assignment
4 from the Four Seasons Partnership; by authorization of Defendant Dodger Theatricals, Ltd., under
5 a further sublicense and/or assignment from Defendant DSHT, Inc. and/or Defendants Valli and
6 Gaudio, and/or by authorization of Defendant, Jersey Boys Broadway Limited Partnership, under an
7 assignment from Defendant Dodger Theatricals, Ltd..

8 9. Defendant, Michael S. David (“David”), an individual, domiciled in New York, New
9 York, is an established Broadway and off-Broadway producer, a founder member, controlling
10 principal, officer, and shareholder of, Defendant, Dodger Theatricals, Ltd., and was an officer and/or
11 shareholder of, Defendant, DSHT, Inc. in 2004, when said Defendant agreed to produce *Jersey Boys*
12 in La Jolla, California. Upon information and belief, Defendant David, in his capacity as a
13 controlling officer of Defendants, Dodger Theatricals, Ltd. and DSHT, Inc., is also the signatory to
14 the various agreements through which rights in the Work were licensed and/or assigned to and from
15 these companies for *Jersey Boys*, and to and from other entities in which Defendant Dodger
16 Theatricals, Ltd., is a general partner.

17 10. Defendant, DSHT, Inc., formerly Dodger Stage Holding Theatricals, Inc. (“DSHT”),
18 a Delaware corporation, with a principal office in New York, New York, is a producer of Broadway
19 and off-Broadway musicals, and is identified as “Producer” of *Jersey Boys* in an agreement with the
20 Four Seasons Partnership, through which the exclusive rights in the Work which Defendant DeVito
21 purportedly transferred to Valli and Gaudio, were in turn transferred to DSHT, along with the right
22 to issue further licenses to, *inter alia*, other production companies controlled by DSHT principals.
23 Upon information and belief, DSHT was owned for a time by principals of Defendant Dodger
24 Theatricals, Ltd. and Stage Holding, a business organized and operating in the Netherlands, but was
25 subsequently reorganized, and no longer shares principals with Defendant Dodger Theatricals, Ltd.
26 Upon information and belief, Defendants DSHT, Dodger Theatricals, Ltd., Jersey Boys Broadway
27 Limited Partnership, and their licensees or transferees, are responsible for productions and
28 performances of *Jersey Boys* throughout the world, including the permanent production produced

1 in this District and unofficial Division by Defendant, JB Viva Vegas, LP, and serve, *inter alia*, as
2 clearinghouses for revenues generated by the musical, and the distribution and/or allocation of
3 royalties therefor.

4 11. Defendant, Dodger Theatricals, Ltd. (“Dodger Theatricals”), a corporation, organized
5 under the laws of New York, with a principal office in New York, New York, is a producer of
6 Broadway and off-Broadway musicals, including *Jersey Boys*, and is signatory to the agreement
7 between Defendants Valli, Gaudio, and DSHT, through which the exclusive rights in the Work
8 which Defendant DeVito purportedly transferred to Defendants Valli and Gaudio were further
9 licensed exclusively and/or assigned to Dodger Theatricals and/or DSHT, for use and adaptation in
10 connection with *Jersey Boys*. Upon information and belief, Dodger Theatricals, DSHT, and their
11 lessees, licensees, or transferees, are responsible for productions and performances of *Jersey Boys*
12 throughout the world, including the permanent production in this District and unofficial Division by
13 Defendant, JB Viva Vegas, LP, and serve, *inter alia*, as clearinghouses for revenues generated by
14 the musical, and the distribution and/or allocation of royalties therefor.

15 12. Defendant, Jersey Boys Broadway Limited Partnership (“Jersey Boys Broadway”),
16 a limited partnership, organized under the laws of New York, in which Defendant Dodger
17 Theatricals is the general partner, has a principal office in New York, New York; is the producer of
18 *Jersey Boys* on Broadway, and upon information and belief, is now the owner of the *Jersey Boys*
19 production, by virtue of an assignment from Defendant, Dodger Theatricals, which included the
20 exclusive rights in the Work which Defendant DeVito purportedly transferred to Defendants Valli
21 and Gaudio. Jersey Boys Broadway later sublicensed those rights to Defendant, JB Viva Vegas, LP,
22 for the permanent production of *Jersey Boys* in this District and unofficial Division, and upon
23 information and belief, Jersey Boys Broadway, along with Dodger Theatricals, DSHT, and various
24 licensees or transferees, is responsible for productions and performances of *Jersey Boys* throughout
25 the world.

26 13. Upon information and belief, Defendant, JB Viva Vegas, LP (“JB Viva Vegas”) is
27 a limited partnership, organized under the laws of New York, in which Defendant Dodger
28 Theatricals is the general partner; has a principal office in New York, New York; is a purported

1 licensee of exclusive rights in the Work ostensibly obtained by Defendant Jersey Boys Broadway
2 from Defendant Dodger Theatricals, which Dodger Theatricals and/or DSHT ostensibly obtained
3 from Defendants Valli and Gaudio, following the initial transfer of such rights from Defendant
4 DeVito thereto; is producer of a permanent production of *Jersey Boys* in this District and unofficial
5 Division; and, serves, *inter alia*, as a clearinghouse for revenues generated by the musical in Las
6 Vegas, Nevada.

7 14. Upon information and belief, Defendant, Jersey Boys Records Limited Partnership
8 (“Jersey Boys Records”) is a limited partnership, organized under the laws of New York, in which
9 Defendant Dodger Theatricals is the general partner; has a principal office in New York, New York;
10 is a licensee of Dodger Theatricals and/or Jersey Boys Broadway, and, along with Jersey Boys
11 Broadway, is responsible for the *Jersey Boys 2005 Broadway Cast Recording* (“Jersey Boys Cast
12 Recording”), which includes spoken dialogue copied and/or adapted from the Work.

13 15. Upon information and belief, Defendant, Skunk, Inc. (“Skunk”), a corporation,
14 organized under the laws of New York, with a principal office in New York, New York, is the “loan-
15 out” company through which Defendant McAnuff’s services as director of *Jersey Boys* have been
16 provided since August 1, 2005, and is a signatory to agreements with, *inter alia*, Jersey Boys
17 Broadway, under which all payments for Defendant McAnuff’s services are tendered to Skunk,
18 which in turn, is responsible for Defendant McAnuff’s compensation.

19 16. Upon information and belief, Defendant, Getting Home, Inc. (“Getting Home”) is a
20 corporation, organized under the laws of Nevada, with a registered agent in Carson City, Nevada;
21 is a “loan-out” company through which certain of Defendant Elice’s services as a writer of *Jersey*
22 *Boys* are provided, with payments made by the *Jersey Boys* producers to Getting Home, which in
23 turn, is responsible for Defendant Elice’s compensation; and, is a signatory to, *inter alia*, an
24 agreement with Jersey Boys Broadway and Rhino Entertainment, concerning the *Jersey Boys Cast*
25 *Recording*, which includes spoken dialogue copied and/or adapted from the Work.

26 **NATURE OF THIS ACTION**

27 17. This is an action against Defendant DeVito for declaratory relief under the *Federal*
28 *Declaratory Judgment Act* [28 U.S.C. § 2201] and Sections 101 and 201 of the Copyright Act of

1 1976, as amended [17 U.S.C. §§ 101 and 201], seeking declarations: (a) that the Work is a “joint
2 work” within the meaning of 17 U.S.C. § 101; (b) that Mr. Woodard was, at minimum, a co-author
3 of the Work, and co-owner with Defendant DeVito thereof, under 17 U.S.C. § 201(a); (c) that
4 Plaintiff is an “author’s widow” with respect to the Work, as defined by 17 U.S.C. § 101, and is, at
5 minimum, a co-owner of the Work, under 17 U.S.C. §§ 201(a) and (d)(1); (d) that Plaintiff has the
6 right to publish and exploit the Work, and to enjoy, exercise, and enforce all other rights, benefits,
7 and causes of action accorded to copyright owners with respect thereto, under, *inter alia*, 17 U.S.C.
8 §§ 106, 501(b), 502, 503, 504, and 505; (e) that U.S. Copyright Reg. No. TXu 454 118 for the Work,
9 which was obtained by Defendant DeVito in his name only, was secured, and has been held, in
10 constructive trust for Mr. Woodard and Plaintiff, and should be amended to reflect Mr. Woodard’s
11 authorship and ownership interest, in accordance with 17 U.S.C. § 201(a), and his status as an
12 original copyright “claimant,” under 37 C.F.R. § 202.3(a)(3), so that Plaintiff may record her status
13 as heir and successor to this interest under 17 U.S.C. § 205; (f) that Defendant DeVito lacked the
14 authority and requisite copyright ownership interest, under 17 U.S.C. §§ 201(a) and (d)(2), to issue
15 the “exclusive,” “irrevocable,” and “perpetual” license encompassing the Work which he purportedly
16 granted to Defendants Valli and Gaudio, in the absence of Plaintiff’s express consent, and that said
17 exclusive license was void *ab initio*, insofar as it covered the Work; or, (g) that Defendant DeVito’s
18 said “exclusive license” to Defendants Valli and Gaudio amounted to only a nonexclusive license,
19 which said Defendants could not further sublicense, assign, or otherwise transfer, under 17 U.S.C.
20 § 201(d)(2), in the absence of Plaintiff’s express consent; or, (h) that said “exclusive license”
21 constituted an assignment to Defendants Valli and Gaudio of Defendant DeVito’s entire share in the
22 exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater,
23 film, and television, resulting in an indivisible co-ownership of such right by Plaintiff (50%) and
24 Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2). This action for
25 declaratory judgment is brought to resolve an actual controversy between the parties, as Defendant
26 DeVito disputes Mr. Woodard’s co-authorship of the Work; has registered the copyrights therein in
27 his own name and refuses to amend or supplement the registration; has issued “exclusive licenses”
28 and/or assigned rights in the Work to others (namely, Defendants Valli and Gaudio), without

1 Plaintiff's consent; and, has refused to account to Plaintiff for profits derived from, *inter alia*, the
2 use and adaptation of the Work for *Jersey Boys*, and the "exclusive license" granted to Defendants
3 Valli and Gaudio purportedly authorizing same.

4 18. This is also an action in equity for an accounting from Defendant DeVito of profits
5 obtained from the use and benefit of the Work, and/or works adapted or derived therefrom,
6 including, but not limited to, profits obtained from the "exclusive license" granted to Defendants
7 Valli and Gaudio, authorizing the use and adaptation of the Work for *Jersey Boys*, and/or profits
8 obtained from the assignment of Defendant DeVito's entire share of certain exclusive rights in the
9 Work to said Defendants. Further, this is an action for breach of contract against Defendant DeVito,
10 arising from his failure to credit Mr. Woodard as co-author of the Work; his failure to account for
11 and share equally with Plaintiff in profits arising directly or indirectly therefrom; and, his
12 assignment, or attempted transfer, of exclusive rights in the Work, in violation of an agreement
13 between Defendant DeVito and Mr. Woodard, dated December 1, 1988.

14 19. This is further an action against Defendant DeVito for unjust enrichment; breach of
15 the implied covenant of good faith and fair dealing in the performance of contractual obligations in
16 the context of a special and confidential relationship; constructive fraud, fraud, and fraudulent
17 concealment, arising from, *inter alia*, Defendant DeVito's failure to disclose to Plaintiff his licensing
18 and/or assignment of exclusive rights in the Work, or his receipt of profits therefrom,
19 notwithstanding the existence of a special and confidential relationship; and, fraudulent conversion
20 of profits and/or royalties received, which rightfully belong to Plaintiff. Finally, this is an action for
21 copyright infringement against Defendant DeVito, under the laws of the United Kingdom, Canada,
22 and Australia, arising from Defendant DeVito's unilateral grant of rights to Defendants Valli and
23 Gaudio to use, adapt, and further license or transfer rights in the Work, as necessary for productions
24 and performances of *Jersey Boys* in these countries, without Plaintiff's express prior consent.

25 20. This is also an action for declaratory relief against Defendants Valli, Gaudio, DSHT
26 Dodger Theatricals, and *Jersey Boys Broadway*, under the *Federal Declaratory Judgment Act* [28
27 U.S.C. § 2201] and Section 201 of the Copyright Act of 1976, as amended [17 U.S.C. § 201],
28 seeking declarations: (a) that the "exclusive," "irrevocable," and "perpetual" license encompassing

1 the Work which Defendant DeVito granted to Defendants Valli and Gaudio, was void *ab initio*,
2 under 17 U.S.C. §§ 201(a) and (d)(2); or, (b) that Defendant DeVito's said "exclusive license" to
3 Defendants Valli and Gaudio amounted to only a nonexclusive license, which said Defendants could
4 not further sublicense, assign, or otherwise transfer, under 17 U.S.C. § 201(d)(2), in the absence of
5 Plaintiff's express consent; or, (c) that said transfer of exclusive rights constituted an assignment to
6 Defendants Valli and Gaudio of Defendant DeVito's entire share in the exclusive right to prepare
7 derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
8 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants Valli and
9 Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2); and, (d) that as transferees of less than
10 Defendant DeVito's entire share in the exclusive rights comprising the copyright in the Work,
11 Defendants Valli and Gaudio could not further license or assign the rights so obtained, under 17
12 U.S.C. § 201(d)(2), in the absence of Plaintiff's express consent, rendering all subsequent non-
13 exclusive licenses, exclusive licenses, assignments, leases, and/or other transfers of said rights by
14 said Defendants void and invalid, including, but not limited to, the licenses and/or assignments
15 granted by Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or
16 Dodger Theatricals, and the subsequent assignment of rights from Dodger Theatricals to Jersey Boys
17 Broadway; (e) that Defendants DSHT, Dodger Theatricals, and Jersey Boys Broadway have no rights
18 to use, adapt, or perform adaptations of the Work, or to authorize others to do so, by virtue of any
19 such grant, in the United States, or abroad; or, (f) that Defendants Valli's and Gaudio's transfer of
20 the exclusive rights in the Work obtained from Defendant DeVito, to Defendants DSHT and Dodger
21 Theatricals, was effective, and constituted an assignment of Valli's and Gaudio's entire share in the
22 exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater,
23 film, and television, resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and
24 Defendants DSHT and/or Dodger Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d), and that (g)
25 Defendant Dodger Theatricals' subsequent transfer of said exclusive rights to Defendant Jersey Boys
26 Broadway was effective, resulting in an indivisible co-ownership of these rights by Plaintiff (50%)
27 and Defendant Jersey Boys Broadway (50%), under 17 U.S.C. §§ 201(a) and (d). This action for
28 declaratory judgment is brought to resolve an actual controversy between the parties, as Defendants

1 Valli, Gaudio, DSHT, and Dodger Theatricals are aware, and have been advised, of Plaintiff's
2 ownership claims concerning the Work, but refuse to enter licensing negotiations with Plaintiff, or
3 to desist and refrain from performing, publishing, or authorizing the performance and/or publication
4 of, unlicensed adaptations of the Work in the United States and abroad.

5 21. This is also an action in equity for an accounting from Defendants Valli, Gaudio,
6 DSHT, Dodger Theatricals, and Jersey Boys Broadway, of profits obtained from the use and benefit
7 of the Work and/or works adapted or derived therefrom, including *Jersey Boys*, pled in the
8 alternative, under FED. R. CIV. P. 8(d)(2)-(3), seeking payment to Plaintiff of her fifty (50%) *pro rata*
9 share of such profits, once determined, from each such Defendant, during the period in which it co-
10 owned exclusive rights in the Work with Plaintiff, in the event that Defendant DeVito's purported
11 transfer of exclusive rights to Valli and Gaudio is found to constitute an assignment of his entire
12 share in the subject rights in the Work, under 17 U.S.C. § 201(d), as set forth in Paragraph 17(h)
13 hereof, and in the event that the subsequent transfers of such exclusive rights by Defendants Valli
14 and Gaudio to Defendants DSHT and/or Dodger Theatricals, and by Defendant Dodger Theatricals
15 to Defendant Jersey Boys Broadway, are found to constitute an assignment of their entire shares in
16 the subject rights in the Work thereto, under 17 U.S.C. § 201(d)(2), as set forth in Paragraph 20(f)
17 and (g) hereof.

18 22. This is further an action against Defendants Valli, Gaudio, Brickman, Elice,
19 McAnuff, DSHT, Dodger Theatricals, Jersey Boys Broadway, JB Viva Vegas, and Jersey Boys
20 Records, for copyright infringement, under Section 501(a) of the Copyright Act of 1976, as amended
21 [17 U.S.C. § 501(a)], based on their unlicensed and unlawful exercise of exclusive rights in the Work
22 which are reserved to authors and copyright owners, under 17 U.S.C. § 106, and are held, indivisibly,
23 by Plaintiff and Defendant DeVito, as co-owners of the joint Work, including: (a) the authorization
24 of others to prepare derivative works based upon the Work by Defendants Valli, Gaudio, DSHT,
25 Dodger Theatricals, and Jersey Boys Broadway; (b) the authorization of others to reproduce and
26 distribute copies of the Work, by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT,
27 Dodger Theatricals, and Jersey Boys Broadway; (c) the preparation of derivative works based upon
28 the Work by Defendants Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, Jersey Boys

1 Broadway, and Jersey Boys Records; (d) the performance and distribution of derivative works based
2 upon the Work by Defendants DSHT, Dodger Theatricals, Jersey Boys Broadway, and their
3 purported lessees and/or “sublicensees,” including JB Viva Vegas; (e) the reproduction of the Work
4 by Defendants Brickman, Elice, and McAnuff; and, (e) the distribution of copies of the Work by,
5 *inter alia*, Defendants Brickman, Elice, and McAnuff. Additionally, this is an action for vicarious
6 copyright infringement against Defendants Valli, Gaudio, McAnuff, David, DSHT, Dodger
7 Theatricals, Jersey Boys Broadway, Jersey Boys Records, Skunk, and Getting Home, who had the
8 right and ability to supervise and control the infringing acts, and received direct financial benefits
9 from the infringements. This is also an action for contributory copyright infringement against
10 Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger Theatricals, Jersey
11 Boys Broadway, and Jersey Boys Records, who knew, should have known, and/or had reason to
12 know of the infringing activity, and induced, caused and/or materially contributed to the infringing
13 conduct of other Defendants herein.

14 23. Finally, this is an action against Defendants Valli, Gaudio, Brickman, Elice,
15 McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, for copyright infringement under
16 the laws of the United Kingdom, Canada, and Australia, arising from their dealings in respect of the
17 Work in said countries, and their authorization of infringing acts therein, from within, and outside,
18 the United States; their exercise of exclusive rights in the Work in such countries, which are reserved
19 to copyright owners therein, including, but not limited to, the authorization of performances of
20 adaptations of the Work therein, and acts of adapting the Work for such performances; their
21 production and oversight of such performances, and collection and sharing of revenues therefrom;
22 and, their participation in agreements licensing, transferring, and/or otherwise disposing of exclusive
23 and/or nonexclusive rights in the Work, all in the absence of Plaintiff’s consent, notwithstanding her
24 status as a co-owner of the Work.

25 **PERSONAL JURISDICTION AND VENUE**

26 24. This Court has personal jurisdiction over Defendant DeVito, as he is a resident of this
27 State, and the Court in which this action was initially filed held that personal jurisdiction is proper
28 over Defendant DeVito herein. This Court also has personal jurisdiction over Defendant, Getting

1 Home, Inc., as it incorporated in this State, and has a registered agent for service of process in this
2 State. This Court has personal jurisdiction over Defendants Valli, Gaudio, Brickman, Elice,
3 McAnuff, David, DSHT, Dodger Theatricals, JB Viva Vegas, LP, Jersey Boys Broadway, Jersey
4 Boys Records, and Skunk, as they regularly transact business within this State, and/or with citizens
5 hereof; derive royalties and other compensation from the performance and sale of derivative works
6 based on the Work within this State; have committed acts of copyright infringement, vicarious
7 copyright infringement, and/or contributory copyright infringement in this State, giving rise to the
8 injuries complained of herein; and/or have established long-term agreements and obligations with
9 citizens of this State, forming the subject of Plaintiff's requests for declaratory relief.

10 25. Venue is proper in this District and unofficial Division, under 28 U.S.C. §§ 1400(a)
11 and 1391(b)(2) and (c), in that Defendant DeVito resides in this District and unofficial Division, and
12 the Court which transferred this action hereto held that venue is proper as to Defendant DeVito
13 herein; the remaining individual, corporate, and limited partnership Defendants or their agents "may
14 be found" herein, and a substantial part of the events or omissions giving rise to Plaintiff's claims
15 occurred in this judicial district. Alternatively, venue is proper under 28 U.S.C. § 1391(a)(2) and
16 (c), in that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in
17 this judicial district.

18 **STATEMENT OF FACTS**

19 26. Plaintiff's husband, Rex Conrad Woodard, was a well-respected member of the
20 Beaumont, Texas legal establishment between 1975 and 1991, and a distinguished journalist with
21 a national reputation in the field of classic rock and roll music. Born in Dallas, Texas on April 10,
22 1950, Mr. Woodard moved to Beaumont in 1975, after obtaining his law degree from the Baylor
23 University School of Law and passing the Texas Bar Exam. He began his legal career as an
24 associate with Sanders & Sanders, and in 1977, founded Woodard and Lindsay, where he practiced
25 law through October 1984. He established a successful solo trial practice thereafter, and was
26 certified in civil trial law by the Texas Board of Legal Specialization in 1987. Mr. Woodard met
27 Plaintiff in 1981, and the two were married on May 17, 1986.

28 27. Mr. Woodard had been enamored of writing and music from an early age, and his

1 skill with the written word, knack for compelling story-telling, and knowledge of popular music
2 developed into an avocation he hoped would form a career. As a child of four or five years old, he
3 “dictated” elaborate stories of wartime to his mother, who would type them for the entire family to
4 ponder and enjoy. As he grew older, he wrote stories about baseball to share with friends, and
5 articles concerning coins, and his coin collection. In high school, he served on the editorial staff of
6 the yearbook and was a member of the Journalism Club. During law school, he was Editor of the
7 Student Bar Association’s newspaper, and later, while maintaining his full-time law practice, he
8 pursued a secondary career as a freelance writer, publishing articles about 1960's popular music –
9 the subject with which he was most engaged. An avid record collector throughout his life, and a
10 rock trivia buff since the early-1960's, when he would listen to AM radio until dawn with his sister,
11 and compete in music trivia contests on radio, and on “Sumpin’ Else,” a Dallas television show, he
12 began writing for *Goldmine Magazine* in the late-1970's, authoring articles about Terry Cashman,
13 lead singer of the Chevrans; Dave Dee, Dozy, Beaky, Mick & Tich, a 1960's German pop group with
14 hit singles in the United States and Europe, and others.

15 28. Rex Woodard’s best work, however, was reserved for the Four Seasons, who, with
16 lead singer Frankie Valli, writer and keyboard player, Bob Gaudio, lead guitarist, Tommy DeVito,
17 bassists Nick Massi and (later) Joe Long, and writer/producer Bob Crewe, were his favorite musical
18 artists. Mr. Woodard had, *inter alia*, tracked every public development in the Four Seasons’ history
19 since purchasing the 45 RPM single, “Candy Girl,” at age 13; collected the band’s records and
20 maintained a comprehensive discography of its recordings, including rare bootlegs and limited
21 edition fan club releases; compiled an extensive collection of rare photographs and newspaper
22 clippings concerning the group, and contributed to a Four Seasons “fanzine” published in the U.K.
23 Moreover, the Four Seasons were aware of his interest and writings, as evidenced by the true copy
24 of a memo sent to Mr. Woodard by Defendant Gaudio’s office on October 17, 1980, attached hereto
25 as *Exhibit 1*. Accordingly, Mr. Woodard was both enthusiastic and well-prepared when the
26 opportunity arose to write a feature article about the group for *Goldmine* in 1981. A true copy of this
27 article, entitled, *THE FOUR SEASONS A Lesson in Survival*, as published in August 1981 is
28 attached hereto as *Exhibit 2*. The article was well-received by fans and rock historians, and to date,

1 remains the definitive published history of the Four Seasons' "lost years" – between 1970, when
2 the group slipped from public consciousness, and 1975, when a reconstituted line-up returned to
3 chart-topping status with the singles, "Who Loves You" and "December 1963 (Oh What a Night)."

4 29. Upon information and belief, Mr. Woodard's 1981 *Goldmine* article garnered respect
5 from Defendants Valli, Gaudio, and DeVito, as well as former group members Nick Massi and Joe
6 Long, and whetted Mr. Woodard's own curiosities concerning the earliest history of the Four
7 Seasons group. Accordingly, shortly after his August 1981 *Goldmine* article was published, Mr.
8 Woodard conducted extensive research and interviews with early members of the group, in
9 preparation for a second article that would focus on the formation of the Four Seasons, and, in
10 particular, its direct predecessor, the Four Lovers, which Defendant DeVito led. On December 9,
11 1981, for this article, Mr. Woodard interviewed Defendant DeVito for the first time, covering a wide
12 range of topics. A true copy of a representative excerpt of Mr. Woodard's handwritten notes from
13 this interview is attached hereto as *Exhibit 3*. On December 23, 1981, Mr. Woodard interviewed
14 Defendant DeVito's brother, Nick DeVito, who was an early member of the Four Lovers, and its
15 predecessors, the Varietones and the Variety Trio, and Defendant DeVito was also present,
16 occasionally interjecting his own perspectives. A true copy of a sample page from Mr. Woodard's
17 notes concerning his December 1981 interview with Nick DeVito is attached hereto as *Exhibit 4*, and
18 true copies of representative notes from his interview with Defendant DeVito on that date are
19 attached hereto as *Exhibit 5*. On January 8, 1982, Mr. Woodard also interviewed Nick Massi – a
20 revolving member of the Four Lovers, the Varietones, and the Variety Trio, and a founder member
21 of the Four Seasons, who rarely granted interviews. True copies of representative notes from this
22 interview are attached hereto as *Exhibit 6*. The resulting article, published in the June 1982 issue
23 of *Goldmine Magazine*, and entitled, *THE FOUR LOVERS Forerunners to the Fabulous Four*
24 *Seasons*, was, like Mr. Woodard's first, a definitive piece, providing information regarding the
25 group's origins that had not previously been made public, and which is still referenced by rock
26 historians and fans. A true and correct copy of this article, as published, is attached hereto as *Exhibit*
27 *7*.

28 30. Mr. Woodard would later observe, with respect to the interviews leading to his 1982

1 *Goldmine* article, that as an attorney who had taken numerous depositions, he suspected he was not
2 getting “the whole story” from Nick Massi and the DeVito brothers. Of particular interest to Mr.
3 Woodard were the “gaps” between the real ages of the Four Seasons’ members and their “published”
4 ages, which appeared in promotional press releases – a gap of eight years for Defendant DeVito and
5 Nick Massi, and several years for Defendant Valli and early-member Nick DeVito. Whereas, such
6 discrepancies were not unusual in the entertainment industry, what was intriguing was each
7 member’s inability (or unwillingness) to account for his activities during those “missing years.”
8 These gaps would be filled five or six years later, when Defendant DeVito would present Mr.
9 Woodard with the scoop of his rock journalism career. Meanwhile, Mr. Woodard continued his
10 independent research, fan-related writing, collecting, and news-clipping activities, while keeping in
11 contact with individuals close to the band, and the band itself. As shown in the true copy of a June
12 10, 1983 letter from Defendant Valli to Mr. Woodard, attached hereto as *Exhibit 8*, Mr. Woodard
13 sent items from his personal Four Seasons collection to Defendant Valli that year, for inclusion in
14 a souvenir tour book then under consideration, and both Plaintiff and Mr. Woodard were Defendant
15 Valli’s guests at a Four Seasons concert in Houston, Texas on September 24, 1983. Mr. Woodard
16 also kept in touch with Defendant DeVito, as shown in the true copies of exemplary notes and cards
17 he received from said Defendant between 1982 and 1986, attached hereto as *Exhibit 9*.

18 31. Upon information and belief, Mr. Woodard’s writings appeared in a tour program for
19 a Four Seasons line-up performing in the 1980’s, along with photographs from Mr. Woodard’s
20 personal collection. Sometime thereafter, Mr. Woodard received an unexpected telephone call from
21 Defendant DeVito, who, while no longer a member of the Four Seasons, had obtained a copy of the
22 program, and marveled at the photographs, some of which he had never seen. A dialogue ensued,
23 and Defendant DeVito informed Mr. Woodard that he had a sensational story to tell, but was not a
24 writer, and wanted Mr. Woodard to write it.

25 32. Shortly after this conversation, in November 1988, Mr. Woodard flew to Las Vegas,
26 with Plaintiff and their youngest daughter, and began a series of intensive interviews with Defendant
27 DeVito, during which Defendant DeVito shared, for the first time with any journalist, the true story
28 of his unaccounted-for years. According to Defendant DeVito, most of those years, for himself and

1 the other band members – excluding Defendants Valli and Gaudio – were devoted to various
2 criminal enterprises and long stretches in prison. Moreover, according to Defendant DeVito, these
3 experiences led to underworld contacts, some of which continued throughout the Four Seasons’
4 popular era. These accounts differed radically from the public’s perception of the Four Seasons as
5 clean-cut “kids” singing in tuxedos on the *Ed Sullivan Show*, and Mr. Woodard was intrigued. Mr.
6 Woodard was also excited by the nature of the opportunity offered – not a mere scoop for a magazine
7 article, but the opportunity to write Defendant DeVito’s authorized biography, and tell the Four
8 Seasons’ story to the world. Though Defendant DeVito wanted to share his experiences, he had
9 achieved only an eighth grade education, and could not write the Work, and accordingly, asked Mr.
10 Woodard to do so, with full credit for his efforts, and an equal share in any resulting profits. The
11 Work was to be based on the Las Vegas interviews, which Mr. Woodard recorded, and any other
12 information or material Mr. Woodard might deem beneficial, subject to Defendant DeVito’s
13 approval of the final text. Mr. Woodard agreed to undertake the project, and returned to Beaumont,
14 Texas to begin the process of creating the Work.

15 33. Two weeks later, on December 1, 1988, Mr. Woodard sent a letter agreement to
16 Defendant DeVito, at Defendant DeVito’s request, memorializing the parties’ understandings
17 regarding the Work, and Defendant DeVito signed this document, under the heading,
18 “APPROVED,” and returned it to Mr. Woodard by mail. A true copy of the executed letter
19 agreement is attached hereto as *Exhibit 10*. The key understandings therein were as follows: (a) Mr.
20 Woodard would write Defendant DeVito’s authorized biography, based on the interviews Defendant
21 DeVito had given, “plus any other relevant information that would benefit the book;” (b) Mr.
22 Woodard would “do all of the actual writing;” (c) Defendant DeVito would have control over the
23 final text of the Work; (d) Mr. Woodard and Defendant DeVito would “be shown as co-authors [of
24 the Work] with [Defendant DeVito] receiving first billing;” (e) Mr. Woodard and Defendant DeVito
25 would “share equally in any profits arising from [the Work], whether they be in the form of royalties,
26 advances, adaptations fees, or whatever;” and, (f) the agreement would be binding upon the parties
27 without limitation of term, and upon their heirs, as to obligations and benefits, if Mr. Woodard,
28 Defendant DeVito, or both, should die. *Exhibit 10* at p. 2 (emphasis added). In sum, the parties

1 intended that they be considered co-authors, and that the Work be treated as a “joint work.”

2 34. Mr. Woodard labored over the Work for the next two years, drawing on every shred
3 of knowledge and research he had compiled regarding the Four Seasons over a lifetime in the
4 process, including, *inter alia*, his previous articles for *Goldmine*; his interviews with Nick Massi and
5 Nick DeVito; his two interviews with Defendant DeVito in 1981, and the series of interviews
6 conducted with Defendant DeVito in 1988; his extensive collection of newspaper clippings, record
7 albums, fanzines, and photographs; and the various discographies he had compiled. Mr. Woodard
8 also employed skills he had acquired as an attorney to gather information for the Work, including
9 the filing of requests under the *Freedom of Information Act* with local law enforcement agencies and
10 the Federal Bureau of Investigation, to obtain Defendant DeVito’s criminal records and confirm
11 alleged U.S. government efforts to link Defendant DeVito and/or the Four Seasons to organized
12 crime. Mr. Woodard also created a series of questionnaires for Defendant DeVito, covering all
13 aspects and phases of his life, including such minutiae as favorite foods, the layout of his childhood
14 home, his first sexual experience, his first wife’s hair color, and hundreds of additional factual
15 details, which Defendant DeVito provided. Upon information and belief, an additional questionnaire
16 was prepared, and further interviews conducted, following the Four Seasons’ induction into the Rock
17 and Roll Hall of Fame in 1990, an event described in the Work. From this material, Mr. Woodard
18 constructed a comprehensive outline of Defendant DeVito’s life; selected, organized, placed, and
19 rephrased the anecdotes, recollections, and minutiae he found most compelling, and drafted the
20 entire text of the Work, based on his perceptions of life through Defendant DeVito’s eyes, presented
21 in a “first-person,” narrative style appropriate to said Defendant, and the other characters therein, but
22 utterly original to Mr. Woodard. Mr. Woodard worked night and day on the Work, retreating to his
23 music room at home in the evenings to make notes that would guide his dictation the following day,
24 and dictating the Work during the day at his office, for transcription by his secretary, Myrtle Locke.
25 Mr. Woodard’s law practice suffered as a result of his devotion to the Work, but the Work was more
26 important to him.

27 35. Mr. Woodard remained in close contact with Defendant DeVito throughout the
28 drafting of the Work, by telephone, by mail, and through personal meetings at Defendant DeVito’s

1 Las Vegas home, Mr. Woodard's office, and Plaintiff's and Mr. Woodard's home in Beaumont,
2 Texas, which Defendant DeVito visited with his wife. As Mr. Woodard completed each chapter of
3 the Work, he also sent a copy to Defendant DeVito by mail, and Defendant DeVito would contact
4 Mr. Woodard to discuss any desired changes, sometimes marking changes to the text in pen, and
5 other times simply requesting that particular facts be added or removed. Mr. Woodard would then
6 revise the subject text and send replacement pages to Defendant DeVito, for retention in a notebook
7 containing the latest version of each page of the Work. True copies of correspondence between Mr.
8 Woodard and Defendant DeVito reflecting this process, and Defendant DeVito's participation in Mr.
9 Woodard's *Freedom of Information Act* requests, are attached hereto as *Exhibit 11*.

10 36. As the Work neared completion in late-1990, Mr. Woodard began to seek a publisher,
11 keeping Defendant DeVito apprized of his efforts. True copies of representative correspondence
12 reflecting these efforts are attached hereto as *Exhibit 12*, and an exemplary report to Defendant
13 DeVito is included in *Exhibit 11*, at pp. 20-21. In connection therewith, Mr. Woodard prepared a
14 condensed, chapter-by-chapter outline of the Work for presentation to prospective publishers, a
15 redacted true copy of which is included in *Exhibit 12*, at pp. 4-5. Defendant DeVito also participated
16 in efforts to find a publisher, discussing at least one possible publishing deal with Mr. Woodard in
17 mid-1989, as shown in *Exhibit 11*, at p. 4. The parties also provided a copy of Mr. Woodard's
18 outline to actor, Joe Pesci, for the purpose of adapting the manuscript for a screenplay, as represented
19 in the letter shown in *Exhibit 12*, at p. 3. At all times during these efforts, it was understood and
20 agreed that, whatever use might be made of the Work, both Mr. Woodard and Defendant DeVito
21 would share equally in the resulting profits.

22 37. By December 7, 1990, Mr. Woodard was days away from completing the Work, and
23 on December 11, 1990, he wrote Sandy Choron, of March Tenth, Inc. in New York, to solicit her
24 services as a literary agent. A true copy of this letter is attached hereto as *Exhibit 13*. Therein, Mr.
25 Woodard summarized the history of his involvement with the Work and his role in creating it;
26 described the explosive revelations contained therein, identifying key "scenes" in the Work;
27 discussed the likely impact of these revelations on public perceptions of the Four Seasons; and,
28 confirmed that he had been approached "about doing a screenplay on the project." *Exhibit 13*, at pp.

2-3. Ultimately, Ms. Choron declined. However, as represented in the letter shown in *Exhibit 13*, Mr. Woodard completed the Work shortly thereafter, subject only to line editing for publication, and Defendant DeVito approved the text. Upon information and belief, anticipating that copies of the Work might be disseminated to prospective publishers the following month, Mr. Woodard placed a copyright notice on the title page, in the following form: “© January, 1991 Tommy Devito, Rex Woodard,” with Defendant DeVito receiving top billing, as agreed. A true copy of the cover page of Mr. Woodard’s final version of the Work, together with the first page of text, is attached hereto as *Exhibit 14*.

38. The Work, as completed by Mr. Woodard, and approved by Defendant DeVito, was not strictly a factual work, as dictated by the style and manner in which it was written. Although it purports to be a biographical account of both Defendant DeVito and the Four Seasons musical group, the Work is presented as a first-person narrative, with Defendant DeVito speaking in the present tense as the action evolves, and much of that action is portrayed through dialogue among the “characters,” including dialogue from events at which Defendant DeVito was not present. The Work also purports to divulge what characters are thinking and feeling at various points in the story, and Mr. Woodard and Defendant DeVito were not privy to those thoughts or feelings. Thus, in certain respects, the Work is fiction, speculation, and informed opinion, depicting what Mr. Woodard and/or Defendant DeVito envisioned may have occurred, or what may have been said by others, in view of events believed by Defendant DeVito to be true. The Work reads like a play or screenplay, rather than a biography, with Defendant DeVito’s first-person narration directed to the reader/audience, interspersed with action scenes and dialogue.

39. Unfortunately, Mr. Woodard’s initial efforts to secure an agent or publisher were unsuccessful, and, in late-1990, just weeks following his letter to Ms. Choron, his health began to deteriorate. Although never a smoker, Mr. Woodard had been diagnosed with lung cancer in 1989, and in late-Fall 1990, it spread to his bones. By December 27, 1990, Mr. Woodard was visibly ill, having lost significant amounts of weight, and by February or March 1991, he was bedridden. Defendant DeVito, aware of Mr. Woodard’s terminal illness, told him to “stay strong,” in a December 1990 Christmas card, and Defendant DeVito purchased a Mass Card for Plaintiff in

1 January 1991, entitling her to five-years of Catholic Masses. True copies of these items are attached
2 hereto as *Exhibit 15*.

3 40. Rex Woodard died on May 25, 1991, at forty-one years of age, leaving Plaintiff and
4 three children behind. He penned his own obituary, and a true copy, as published in the May 27,
5 1991 *Beaumont Enterprise*, is attached hereto as *Exhibit 16*. Whereas, numerous achievements are
6 highlighted therein, including his “distinguished reputation nationwide as a journalist of classic rock
7 and roll music,” the accomplishment of which Mr. Woodard was most proud is summarized as
8 follows: “In early-1991, he finished work on his most ambitious project, a full-length book co-
9 authored with Tommy DeVito, a member of the Rock and Roll Hall of Fame.” *Exhibit 16*, at p. 2.

10 41. Mr. Woodard’s dying wish was that Plaintiff and his sister would ensure that the
11 Work was published after his death. Mr. Woodard also hoped that income generated by the Work,
12 and/or adaptations thereof, would support his wife and children when he would no longer be there
13 to support them. In addition to Mr. Woodard’s letter agreement with Defendant DeVito, through
14 which Plaintiff was the successor and beneficiary of Mr. Woodard’s rights and interests in the Work,
15 Mr. Woodard bequeathed to Plaintiff all of his intangible property, “of whatsoever kind and
16 character,” as shown in the redacted copy of his *Last Will and Testament*, attached hereto as *Exhibit*
17 *17*.

18 42. In accordance with Mr. Woodard’s last wishes, both Plaintiff and Mr. Woodard’s
19 sister, Cindy Woodard Ceen, continued to press for publication of the Work after his death.
20 Exemplary form letters, which were customized, and sent to prospective publishers by Plaintiff and
21 Mrs. Ceen in 1992, are attached hereto as *Exhibit 18*, along with a listing of publishers to whom
22 Plaintiff sent a copy of Mr. Woodard’s outline of the Work. Plaintiff also engaged a literary agent
23 in the hopes of publishing the Work, as reflected in the true copy of correspondence received
24 therefrom in May 1997, attached hereto as *Exhibit 19*. Unfortunately, public interest in the Four
25 Seasons had waned by this time, and was perceived by publishers to be minimal. Accordingly, the
26 Work remained unpublished. Nonetheless, both Plaintiff and Mrs. Ceen continued to seek a
27 publisher independently of Defendant DeVito, and were continuing to do so as of September 2005,
28 when Mrs. Ceen decided to contact Defendant DeVito directly, for collaborative assistance.

1 43. Specifically, as shown in the true copies of electronic mail messages, correspondence
2 and handwritten notes attached hereto as *Exhibit 20*, in September 2005, Mrs. Ceen informed Charles
3 Alexander, a prominent and active member of two leading Four Seasons Yahoo! groups, that she was
4 trying to reach Defendant DeVito to discuss publication of the Work. On September 22, 2005, Mr.
5 Alexander responded with the following message:

6 Yesterday I was able to meet with Tommy DeVito. During the
7 course of our conversation, I told him of your desire to publish Rex's
8 book and that you were trying to reach him. He said he loved Rex
 and would [help] in any way he could. Here is his cell phone
 number: [redacted].

9 *Exhibit 20*, at p. 2. Mrs. Ceen telephoned Defendant DeVito that day, and discussed Plaintiff's
10 ongoing desire to publish the Work. During this conversation, Defendant DeVito was friendly and
11 spoke kindly of Mr. Woodard; did not deny Mr. Woodard's authorship of the Work; did not deny
12 that Plaintiff had a right to publish the Work; did not dispute Plaintiff's ownership interest in the
13 Work; and, did not report that any use had been made of the Work, or that rights therein had been
14 licensed or assigned to others. Rather, Defendant DeVito indicated that he wished to update the
15 Work, to include post-1990 developments, and "restore" some of the obscene language he felt Mr.
16 Woodard had omitted, notwithstanding the profusion of profanities already contained within the
17 Work. Finally, Defendant DeVito claimed he had "lost" his copy of the Work, and asked that Mrs.
18 Ceen send a replacement copy. Mrs. Ceen left the conversation excited about Defendant DeVito's
19 statements because she believed he intended to cooperate and further collaborate with her and
20 Plaintiff, and she wrote Defendant DeVito the next day, summarizing their conversation, and
21 providing the requested copy of the Work, as shown in the true copy of her letter included in *Exhibit*
22 *20*, at p. 3. Mrs. Ceen's letter also informed Defendant DeVito that Plaintiff was considering self-
23 publishing the Work, if a traditional publisher could not be found. *Id.*

24 44. Neither Plaintiff nor Mrs. Ceen heard from Defendant DeVito again following the
25 foregoing September 22, 2005 conversation. However, on November 2, 2005, Mrs. Ceen received
26 a phone-mail message from Jay Julien, who identified himself as Defendant DeVito's attorney, and
27 she returned this call on November 3, 2005. During the ensuing conversation, Mr. Julien advised
28 that he had spoken with Defendant DeVito regarding the Work, and concluded that the Work was

1 “not saleable.” Mrs. Ceen was surprised by this comment, because *Jersey Boys* was scheduled to
2 open on Broadway a few days later, and she suggested that renewed appreciation for the Four
3 Seasons engendered by the play would likely generate an interest in Defendant DeVito’s story. Mr.
4 Julien appeared unmoved. Nonetheless, he was complimentary of Mr. Woodard, and at no time
5 disputed Mr. Woodard’s authorship of the Work, Plaintiff’s co-ownership thereof, or Plaintiff’s right
6 to exploit the Work independently of Defendant DeVito, whether “saleable” or not. Nor did Mr.
7 Julien disclose that any use of the Work had been made, or that rights in the Work had been licensed
8 or assigned to others. Mrs. Ceen sent a letter to Mr. Julien later that day, summarizing their
9 conversation, and asking that Defendant reconsider his position – in view of *Jersey Boys*, Plaintiff
10 believed the optimal time for publication had arrived, and both Plaintiff and Mrs. Ceen felt
11 Defendant DeVito’s cooperation and endorsement would be beneficial, if not crucial. True copies
12 of Mrs. Ceen’s notes from her conversation with Mr. Julien, and her follow-up letter of November
13 3, 2005, are included in *Exhibit 20*, at pp. 5-6. Meanwhile, Plaintiff concluded that it remained her
14 burden to publish the Work, and continued to hope for a publishing deal.

15 45. By the end of 2006, *Jersey Boys* had become a smash hit, recouped its initial
16 investment, and garnered four Tony Awards. Although Plaintiff had not seen the show, and was
17 unaware of its specific content, she, in consultation with Mrs. Ceen, surmised that the production’s
18 success would give rise to demand for the Work, and decided to engage counsel to: (a) confirm that
19 the copyrights in the unpublished Work had been registered before her husband’s death on behalf
20 of the coauthors/joint owners; (b) register the copyrights on behalf of the coauthors/joint owners, if
21 no application for such registration had been filed; and, (c) contact Mr. Julien to determine whether
22 Defendant DeVito had changed his mind regarding the marketability of the Work in view of *Jersey*
23 *Boys*’ success, and if so, whether he might again be interested in cooperating and collaborating with
24 Plaintiff.

25 46. A search of the online database records of the United States Copyright Office
26 conducted by Plaintiff’s counsel on or about January 3, 2007, failed to reveal any copyright
27 registration issued to Mr. Woodard for the Work. However, a search under the keyword, “Tommy
28 DeVito,” showed that on January 11, 1991 – a date by which Mr. Woodard’s health was in steep

1 decline – Defendant DeVito filed an application, and obtained a copyright registration, for a literary
2 work entitled, *Tommy DeVito – Then and Now*, under Reg. No. Txu 454 118.

3 47. Whereas, the online database records of the Copyright Office provide little
4 information beyond the title, author, and classification of a work, and Defendant DeVito holds a
5 number of copyright registrations, Plaintiff could not determine whether the work registered by
6 Defendant DeVito under Txu 454 118 was “the Work” at issue herein. Accordingly, in pursuit of
7 additional information, Plaintiff’s counsel ordered a copy of the registration certificate from the
8 Copyright Office, which arrived on or about February 23, 2007. A true and correct copy of Reg. No.
9 Txu 454 118, as received from the Copyright Office, is attached hereto as *Exhibit 21*. As shown
10 therein, only Defendant DeVito is listed as an “author” of the registered work, and only Defendant
11 DeVito is listed as a copyright claimant. *Exhibit 21*, at p. 2. The registration also claims that
12 Defendant DeVito wrote the “entire text” of the work; identifies the work as “unpublished,” and
13 represents that the work was completed in 1990 – the year Mr. Woodard completed the Work.
14 *Exhibit 21*, at pp. 2-3.

15 48. While the information contained in Registration No. Txu 454 118 was potentially
16 alarming, the certificate did not include a copy of the material deposited with Defendant DeVito’s
17 application, so Plaintiff was still unable to determine whether the work registered by Defendant
18 DeVito was “the Work,” or some other literary work. Moreover, the Regulations and Policies of the
19 Copyright Office do not permit anyone other than the listed copyright claimant to obtain a copy of
20 a deposited work, unless a *Copyright Litigation Statement* (Form LS) is ordered, filed with the
21 Copyright Office, and approved. After careful consideration, and in view of additional emerging
22 facts discussed hereinbelow, Plaintiff decided to proceed with the ordering and filing of Form LS,
23 to review the work covered by Registration No. Txu 454 118 and ascertain whether it was the Work.
24 The Form LS was received from the Copyright Office on May 4, 2007, and filed by Plaintiff’s
25 counsel on May 6, 2007.

26 49. Plaintiff’s Form LS was approved by the Copyright Office and, on or about June 8,
27 2007 Plaintiff finally received a copy of the work deposited with the application leading to Reg. No.
28 Txu 454 118. The deposited work was identical to the Work written by Mr. Woodard as described

hereinabove, with two exceptions: (a) Mr. Woodard's original title page, encaptioned, "UNTITLED TOMMY DEVITO/FOUR SEASONS BIOGRAPHY, and bearing the January 1991 copyright notice in Defendant DeVito's and Mr. Woodard's names, had been removed, and replaced with a title page reading, "Tommy DeVito – Then and Now By Tommy DeVito;" and, (b) page 264 of the Work, comprising the first page of Chapter 41, was missing. A true copy of the title page and first textual page of the work covered by Reg. No. Txu 454 118, as received from the Copyright Office, is attached hereto as *Exhibit 22*. A comparison of this material with that included in *Exhibit 14* shows that the *Prologue* of Mr. Woodard's and Defendant DeVito's Work is identical to the *Prologue* in the manuscript covered by Reg. No. Txu 454 118. All remaining pages of text are also identical. In fact, with the exception of the title page, and missing page 264, the work deposited in support of Reg. No. Txu 454 118 is a photocopy of the manuscript typed by Mr. Woodard's secretary, Myrtle Locke. The replacement title page, on the other hand, is in a non-matching font, and appears to have been generated by a different machine. *Exhibit 22*, at p. 2.

50. In view of Mr. Woodard's primary authorship of the Work; the 1988 letter agreement between Mr. Woodard and Defendant DeVito; Defendant DeVito's awareness of Mr. Woodard's (and his heirs') independent attempts to publish the Work; and, the tone and content of Defendant DeVito's and Mr. Julien's conversations with Mrs. Ceen, Plaintiff was shocked to learn that Defendant DeVito had registered the Work in his name without disclosure, and in violation of the parties' agreement. More shocking was the fact that Defendant DeVito had filed the underlying application when he knew Mr. Woodard was gravely ill, and not likely focused upon registering the Work, which, after all, had not been published, making such registration optional when Defendant DeVito obtained Reg. No. Txu 454 118.

51. Unfortunately, this revelation was coupled with near-contemporaneous discoveries that the writers of *Jersey Boys* had obtained access to the Work; that the Work had inspired the form, structure, and content of the musical; that the perspective of the "Tommy DeVito" character therein was derived largely from the Work; that several scenes in *Jersey Boys* were adapted from the Work; that actors portraying Defendant DeVito in the play were provided with copies of the Work; and, that Defendant DeVito was financially connected to the musical, and had received royalties and/or profits

1 therefrom.

2 52. Specifically, as shown in the true copies of published articles attached hereto as
 3 *Exhibit 23*, a July 8, 2006 *Reuters* report in *Backstage Magazine* quoted Defendant McAnuff,
 4 director of *Jersey Boys*, as stating that, in creating the *libretto*, Defendants Brickman and Elice relied
 5 on interviews with Bob Gaudio and Frankie Valli, and “an unpublished autobiography by DeVito,”
 6 *Exhibit 23*, at p. 3 (emphasis added), for the perspectives of their characters in the show, while
 7 relying upon others for Nick Massi’s side of the story, given his death in December 2000. *Id.* The
 8 main *Wikipedia* article concerning Defendant DeVito also reported that: “DeVito has written a
 9 lengthy but as-yet-unpublished autobiography (with the help of the late Rex Woodard) about his
 10 days with the group, which served, along with other accounts, as background material for the
 11 musical.” *Exhibit 23*, at p. 4 (emphasis added). An association between *Jersey Boys* and the Work
 12 was also noted in the following “Question and Answer” exchange accompanying a December 23,
 13 2005 *Jersey Boys* “Podcast:”

14 Q.: Does anyone have any more information about ‘THE BOOK’
 15 that the *Jersey Boys* Broadway production is based on written by
 Marshall Brickman and Rick Elice?

16 A: *Book* is a term that refers to the script, so when they say book by
 17 Brickman and Elice they are referring to the script. The writers did
 18 reference an unpublished Tommy DeVito autobiography that was
provided by Tommy himself. This autobiography was to be, and may
 still be, published.

19 *Exhibit 23*, at p. 5 (emphasis added). And, a published interview with Christian Hoff, who first
 20 portrayed Defendant DeVito in the musical, winning a Tony Award for his performance, reported
 21 further associations. According to Mr. Hoff, when casting for *Jersey Boys* began, the script for
 22 *Jersey Boys* had not yet been written, and he was provided with a one and one-half (1½) page
 23 distillation of the Work from which to audition, *Exhibit 23*, at p. 9, while the entire Work was made
 24 available as background research. *Id.* Deven May, who portrayed Defendant DeVito in a national
 25 touring company of *Jersey Boys*, reported similar access to the Work, in an interview for the June
 26 2007 edition of *Backstage Magazine*:

27 I’ve also had the good fortune to read Tommy DeVito’s unpublished
 28 autobiography. Hopefully, it will come out sometime soon. For me,
 it was really a great educational tool, to get to know who Tommy

1 was.

2 *Exhibit 23*, at p. 16. Finally, other publications reported that Defendant DeVito was financially
3 connected to *Jersey Boys*, and had received profits or royalties from Defendants Valli and Gaudio,
4 as shown in the true and correct copies of such reports attached hereto as *Exhibit 24*. Indeed,
5 Defendant DeVito's Web site, at <www.tommydevito.com>, referred to *Jersey Boys* as "his SMASH
6 HIT Broadway play." *Exhibit 24*, at p. 7 (emphasis added).

7 53. Promptly following these discoveries, and within five days of receiving the material
8 deposited in support of U.S. Copyright Reg. No. Txu 454 118, Plaintiff's counsel wrote Mr. Julien,
9 Defendant DeVito's attorney, demanding, *inter alia*, that Defendant DeVito execute an application
10 for *Supplementary Registration* under Copyright Form CA to add Mr. Woodard as coauthor and co-
11 claimant of the Work; and provide an accounting of profits derived directly or indirectly from the
12 Work, in accordance with the parties' agreement, and their status as joint owners thereof. A copy
13 of this demand, as dispatched to Defendant DeVito's counsel on June 13, 2007, by electronic mail
14 and overnight courier, is attached hereto as *Exhibit 25*.

15 54. Neither Defendant DeVito nor his counsel responded in writing to Plaintiff's June
16 13, 2007 demand, but counsel for the parties spoke several times by telephone, and exchanged
17 electronic mail messages between June and October 2007, in an attempt to reach an amicable
18 resolution. Over the course of these communications, Defendant DeVito's counsel advanced
19 numerous inconsistent factual assertions – initially claiming that Defendant DeVito had not shown
20 the Work to anyone, but later admitting that Defendant DeVito had provided a copy to *Jersey Boys*;
21 initially expressing interest in the possibility of pursuing a joint action for copyright infringement
22 against *Jersey Boys*, and later stating that Plaintiff's only recourse would be an action against
23 Defendant DeVito, as he had authorized the use of the Work; and, initially claiming that Defendant
24 DeVito was "considering" executing the Copyright Form CA provided by Plaintiff, which would
25 supplement Registration Txu 454 118 to include Mr. Woodard's authorship and ownership claims,
26 and finally stating that Defendant DeVito would not sign the document, because Defendant DeVito,
27 rather than Mr. Woodard, was the sole author of the Work. When questioned about the latter claim,
28 Mr. Julien stated that Mr. Woodard was merely Defendant DeVito's "scribe," and that Defendant

DeVito was the author. However, Mr. Julien could not explain, among other things, how Defendant DeVito could have authored those portions of the Work which were based on Mr. Woodard's independent research, his interviews with third parties, and material he obtained through *Freedom of Information Act* requests. Nor could Mr. Julien explain how Defendant DeVito, with only an eighth-grade education, who admittedly was "not a writer," would be capable of "dictating" the Work to Mr. Woodard (who could not type), replete with the dense factual references, invented third-party dialogue, literary techniques, and vocabulary appearing therein.

55. On July 2, 2007, following the initial talks with Defendant DeVito's counsel, Plaintiff filed an application for *Supplementary Registration* with the United States Copyright Office, under Copyright Form CA, seeking to supplement Reg. No. Txu 454 118 to include Mr. Woodard's authorship and ownership claims. A true copy of this application as filed, including the application form, check, and evidence of filing by overnight courier, is attached hereto as *Exhibit 26*. The application was finally refused by the Copyright Office on June 16, 2008, as shown in the true copy of the refusal to register appearing in *Exhibit 26*, at pp. 7-9, on grounds that it was not signed by Defendant DeVito, who filed the basic application Plaintiff sought to supplement. However, Plaintiff appealed this refusal before the Copyright Review Board on June 21, 2008; her appeal was granted, as shown in the true copy of the Review Board's decision attached hereto as *Exhibit 26A*; and a *Supplementary Registration* was issued for the Work in Mr. Woodard's name, under Reg. No. Txu 1 372-636, effective July 3, 2007, as shown in the true copy of the *Certificate of Registration* attached hereto as *Exhibit 26B*. Nonetheless, the *Supplementary Registration* was not cross-indexed with Reg. No. Txu 454 118, so as to provide clear notice of Mr. Woodard's and Plaintiff's rights, because the underlying application was not signed by Defendant DeVito, under 37 C.F.R. § 201.5(b)(1), n. 1. Thus, as a result of Defendant DeVito's actions, and failures to act, Plaintiff cannot secure or readily establish clear title in or to her indivisible ownership interest in the Work, or enjoy the rights and benefits of Reg. No. Txu 454 118, which Defendant DeVito, by law, holds in constructive trust for her.

56. As negotiations with Defendant DeVito's counsel concluded unproductively in October 2007, additional facts emerged concerning the connection between the Work and *Jersey*

Boys. First, as shown in *Exhibit 23*, at p. 22, a September 30, 2007 article in the *Chicago Tribune* included the following account of the writing of the musical:

Drafts passed back and forth. Faced with the conflicting recollection of the surviving Seasons, Elice and Brickman hit on the politically savvy idea of using all three of them as narrators, each telling their version of the group's history at different points in the show. As it happened, DeVito already was writing a memoir, which provided a lot of material, especially on how the Seasons tap-danced around the Outfit members who controlled many of the venues in which they played, and whose loans underwrote DeVito's lifestyle.

Id. (emphasis added). Then, in late-October 2007, Broadway Books, a division of Random House, released an "official" publication authored by David Cote, and entitled, *Jersey Boys The Story of Frankie Valli and the Four Seasons* (the "*Jersey Boys* book"), which provided further details. True copies of representative pages from this publication are attached hereto as *Exhibit 27*. Among the one hundred seventy-seven pages thereof were first-hand accounts from Defendants McAnuff, Brickman, and Elice, concerning the evolution of the *Jersey Boys* libretto. As recounted therein, the initial treatment by Defendants Brickman and Elice was largely fictional, and did not appeal to Defendant McAnuff when he was first approached to direct the play by Defendant David:

DES McANUFF: Michael [David] approached me [about *Jersey Boys*] and he was very excited but thought it needed work. And, quite frankly – and I mean this in no way as an insult to Marshall [Brickman] and Rick [Elice], who've done a spectacular job of writing this thing – the initial treatment wasn't of any interest to me. It was fictionalized. There was some biographical information there, but it was largely invention, a traditional musical structure, with people on the street bursting into song, and a bunch of girls as a Greek chorus of Jersey Girls. It didn't grab me. I felt that Nick and Tommy were indistinguishable; the story focused too much on Bob and Frankie and, quite frankly, it sentimentalized them. It didn't appeal to me I met with them and heard what they had to say, and then I basically told them that it wasn't for me. Finished lunch, shook hands, thought that would be the end of it.

Exhibit 27 at p. 3 (emphasis added). However, the tide turned for Defendant McAnuff, according to the *Jersey Boys* book, when he read the Work and two interviews with Defendants Valli and Gaudio, and was struck with the concept of a biographically-inspired production that would be narrated by the members of the Four Seasons, with each providing his personal perspectives on the group:

DES McANUFF: [T]he really important documents were two long

1 interviews with Frankie and Bob, which were meant to be deep
 2 background for a TV movie. There was also an unpublished
 3 autobiography by Tommy DeVito that is beyond description. It was
just so delicious. Rick and Marshall had a couple of sequences in
their treatment that were clearly inspired by this autobiography.

4 MARSHALL BRICKMAN: We hadn't at that point realized that we
 5 wanted to do a biography. We just didn't want to do a kind of
retrofitting of songs to a preconceived plot, like *Mamma Mia!*

6 *Exhibit 27*, at p. 4. Upon information and belief, the “sequences” referenced in Defendant
 7 McAnuff’s foregoing statement, which were “clearly inspired” by Mr. Woodard’s “really important”
 8 and “delicious,” unpublished Work, were contained in an initial, rough treatment for *Jersey Boys*
 9 written by Defendants Brickman and Elice in February 2004, which drew from, and/or referenced,
 10 the earlier, fictionalized treatment, entitled, “Oh What a Night,” as well as the Work, from which
 11 it copied dialogue and other passages *verbatim*. After reading the Work and reviewing this treatment,
 12 Defendant McAnuff agreed to direct the play; “re-outlined” the play, with the assistance of
 13 Defendants Brickman and Elice, adapting more material from the Work, and ultimately approached
 14 Defendants Valli and Gaudio for permission to do so, in view of the controversial, subject matter
 15 thereof. Upon information and belief, this permission was granted, and the transformation of *Jersey*
 16 *Boys* progressed, with the Work serving as a ready deskside reference and blueprint, large portions
 17 of which were underlined, bracketed, highlighted, and/or otherwise marked, to designate material
 18 for copying and adaptation into the play, and large sections of which appeared in each draft, from
 19 the initial treatment to the various “final” performance scripts.

20 57. The *Jersey Boys* which survived this transformation was extensively adapted from
 21 the Work, and is a “derivative work” thereof, under 17 U.S.C. § 101. Defendant DeVito’s character,
 22 “Tommy DeVito,” the primary focus of the Work, emerged as the opening narrator, mobbed-up
 23 “villain,” and, in the eyes of many, the star of the show, or at least the most entertaining dramatic
 24 element thereof. As reported in an early article from the *Star-Ledger*, a true copy of which is
 25 attached hereto as *Exhibit 28*, “it is Hoff [the actor playing “Tommy DeVito”], his hair dyed black
 26 and slicked back, who struts through the opening scenes, recounting how he plucked Valli from
 27 semi-obscurity and shaped an early version of the Four Seasons between stints at what is dubbed ‘the
 28 Rahway Academy of the Arts.’” *Exhibit 28*, at p. 3. The opening segment of the transformed *Jersey*

1 *Boys* resembles the opening of the Work, and *Jersey Boys* follows the flow and structure thereof,
2 beginning with flashback narration from Defendant DeVito's character, and continuing through the
3 Four Seasons' induction into the Rock and Roll Hall of Fame, with brief postscripts on the members
4 thereafter. Defendant DeVito's quarter of the show ("Spring"), and the other segments ("Summer,"
5 "Fall," and "Winter"), were drawn and adapted from the Work; include staging elements (from
6 Defendant McAnuff) plucked directly or adapted therefrom, at the point where corresponding
7 material appears in the play; and, are riddled with literal copying of the Work's expression. The
8 portrayal of Defendant Valli's primary romantic relationship in *Jersey Boys*, with a fictionalized,
9 composite character called "Mary Delgado," draws heavily from the Work's treatments and
10 characterizations of "Mary Mandell/Mandela" and "Mary Ann Brantley," two of Defendant Valli's
11 ex-wives. The *Jersey Boys* portrayal of a faked murder in the front seat of an automobile in which
12 Defendant Valli was a passenger, was adapted and condensed from a passage presented largely
13 through fictitious dialogue in pages 154-158 of the Work. The Work's account, in Chapter 20, of
14 a "Roman orgy" convened in Detroit for the band, by the Vee Jay record label, replete with gifts,
15 liquor, fruit baskets, and naked women, was adapted for *Jersey Boys* as a Christmas party thrown
16 by the record label in Chicago, with the same characteristics, at which Defendant Gaudio lost his
17 virginity, and including identical gestures, emotional depictions, and dialogue. The Work's portrayal
18 of the band's arrest in Columbus, Ohio (under a warrant issued in Springfield), for "defrauding an
19 innkeeper," after an appearance on the Mike Douglas Show, was adapted for *Jersey Boys* in a scene
20 in which the band members are arrested in Cleveland, following a performance at the Ohio State
21 Fair. The climactic, but entirely fictional scene in *Jersey Boys* in which the band breaks up over
22 Defendant DeVito's gambling and tax debts, during a mob "sit-down," mediated by infamous
23 mobster, Gyp DeCarlo, was adapted from the Work's account of an identically-staged "sit-down,"
24 held years earlier by the same parties, and also mediated by DeCarlo, in which a mob family claimed
25 a financial interest in the Four Seasons as a result of the band's discharge of an early manager
26 connected thereto. The penultimate scene in *Jersey Boys*, depicting the band's 1990 induction into
27 the Rock and Roll Hall of Fame, contains dialogue copied directly from the Work, and adapts the
28 Work's account of Defendant Valli's failure to appear at an after-party hosted by Defendant DeVito

1 and Nick Massi – an event which, upon information and belief, Defendants Valli and Gaudio
2 contend never occurred. And, the *libretto* of the transformed *Jersey Boys* contains invented dialogue
3 copied from the Work. For example, the dialogue in *Jersey Boys*’ account of the band’s first
4 rehearsal of the song, “Walk Like a Man,” was copied, almost *verbatim*, from page 124 of the Work,
5 and other dialogue from that page, attributed to Defendant Gaudio in the Work, was appropriated
6 as a punch line for the Bob Crewe character in *Jersey Boys*, which draws great laughter from the
7 audience. In fact, the vast majority of *Jersey Boys*’ content can be traced directly to the Work,
8 including the most-discussed scenes, the play’s framework, and its most surprising revelations –
9 revelations the Work was supposed to first bring to light. Upon information and belief, Mr.
10 Woodard’s December 11, 1990 summary of the Work, appearing in the letter shown in *Exhibit 13*
11 at pp. 2-3, would be recognized as a summary of *Jersey Boys* by any ordinary observer of the play,
12 despite the fact that it was written fifteen years before the show’s Broadway debut. And, words first
13 fixed in a tangible medium of expression by Mr. Woodard between 1988 and 1990, appear in *Jersey*
14 *Boys, verbatim*.

15 58. Upon information and belief, following Plaintiff’s June 2007 demands to Defendant
16 DeVito, and the unsuccessful June through October 2007 negotiations between counsel, Defendant
17 DeVito, through Jay Julien, his attorney, took additional steps to perpetuate the “cover-up” they had
18 begun in 2005, to minimize the likelihood that Defendant DeVito would be held accountable to
19 Plaintiff for profits derived from the use, exploitation, and adaptation of the Work for *Jersey Boys*.
20 First, as recounted in the electronic mail message attached hereto as *Exhibit 29*, written by Charles
21 Alexander, who authored the *Forward* to the *Jersey Boys* book, Defendant DeVito withdrew almost
22 all of his quotes therefrom, well after the deadline for publication, to “save them for his forthcoming
23 autobiography,” causing a great deal of difficulty for the publisher. *Exhibit 29*, at p. 2. Whereas,
24 the use of direct quotations from the Work in the *Jersey Boys* book would have required Defendant
25 DeVito to account to Plaintiff for profits, upon information and belief, the subject material was
26 actually removed in an attempt to conceal the relationship between the Work and the play, and to
27 deprive Plaintiff of royalties and/or an accounting, even though such an accounting was already
28 required, due to the inclusion of the *Jersey Boys libretto* in the *Jersey Boys* book, and headers with

1 quotes from dialogue in *Jersey Boys*, copied from the Work *verbatim*. Second, in an October 2007
 2 interview for <www.JerseyBoysPodcast.com>, released in December 2007, Defendant DeVito
 3 asserted, falsely, that he had not shown the Work to anyone – when asked about the role of the Work
 4 in the musical, DeVito claimed he had only told stories to Defendants Brickman, Elice, and
 5 McAnuff, notwithstanding the contrary evidence in *Exhibit 23* and *Exhibit 27* hereof. Third, during
 6 the same week in October 2007, Defendant DeVito dismantled his Web site, at
 7 <www.tommydevito.com>, hoping that the reference to “his SMASH HIT *Jersey Boys*” thereon,
 8 would not be noticed by Plaintiff. Finally, in a secondary strategy to deprive Plaintiff of profits due,
 9 Defendant DeVito stated publicly, in a December 2007 interview with *Goldmine Magazine* – the
 10 publication in which Rex Woodard’s original pieces concerning the Four Seasons and Four Lovers
 11 had appeared – that he had “dictated the book to a lawyer who worked for *Rolling Stone*,” and that,
 12 “[i]t’s not gonna come out yet.” A true copy of the relevant portion of this interview, as published,
 13 is attached hereto as *Exhibit 30*. Upon learning of these actions, and Defendant DeVito’s plain and
 14 express repudiation of Mr. Woodard’s authorship, Plaintiff lodged the instant suit against Defendant
 15 DeVito, while still unaware, due to his deceptions and concealments, of the precise nature of his
 16 license to the other Defendants herein, if any, to use and adapt the Work for *Jersey Boys*, or the
 17 nature, extent, and origin of his financial interest in the production.

18 59. These questions were answered in July 2008, following Plaintiff’s review of certain
 19 documents made public in Defendant Valli’s divorce proceedings against his third wife in Los
 20 Angeles, California, true copies of which are attached hereto as *Exhibit 31*, redacted only to obscure
 21 personal addresses. As shown in *Exhibit 31*, at pp. 38-41, on or about August 13, 1999, Defendant
 22 DeVito entered an agreement with Defendants Valli and Gaudio, through which he issued an
 23 exclusive, irrevocable, perpetual, worldwide, assignable license thereto, to use, adapt, change,
 24 fictionalize, and otherwise modify, as they saw fit, certain “Materials,” including principally his
 25 “biographies,” for the purpose of creating a musical stage play based on the “life and music” of the
 26 Four Seasons. This transfer not only encompassed the exclusive right to use and adapt the Work for
 27 “theatrical productions” but also included exclusive rights in “all ancillary and subsidiary
 28 exploitations thereof including, without limitation, cast albums, motion picture and televised

versions, merchandise, and/or other works,” “in all media now existing or later devised.” *Id.*, at pp. 39-40. The agreement included a waiver by Defendant DeVito of any and all claims that the use and/or adaptation of such “Materials” would violate any copyrights therein, and further specified that Defendant DeVito would have no right to inspect or approve the resulting derivative works, or the manner in which the “Materials” (including the Work) were used. *Id.*, at p. 39. In consideration for this “exclusive license,” the agreement provided that Defendant DeVito would be paid four-fifths (80%) of twenty-five (25%) percent of the royalties accorded Defendants Valli and Gaudio for the “underlying rights” and certain “subsidiary rights” in the prospective play, with the remaining one-fifth (20%) of this twenty-five (25%) share to be paid to Nick Massi. The agreement does not mention Plaintiff’s rights in the Work, or otherwise limit the exclusive and final nature of the purported transfer, other than providing limited rights of reversion if the play was not produced within a specific period of time, with the initial producer, or one subsequent producer. Nor does it reserve any rights for Defendant DeVito in the “Materials” transferred, once the “underlying rights” have “merged” with the play, a contingency Defendants claim has occurred.

60. Plaintiff is not fully informed or aware, at present, of the manner(s) in which Defendants Valli and Gaudio exercised their “rights” under the foregoing “exclusive license,” between 1999, when it was executed, and May 1, 2004, when a further transfer purportedly occurred. However, upon information and belief, Defendants Valli and Gaudio issued licenses and/or sublicenses thereunder in 1999 and/or thereafter, to, *inter alia*, one or more authors commissioned to prepare an early treatment for the play, and an initial producer. Upon information and belief, this preliminary treatment, entitled, “Walk Like a Man,” was rejected, the first author(s) fired, and the agreement with the initial producer permitted to lapse, leading to the engagement (and licensing) of Defendants Brickman and Elice, who prepared the treatment described in Paragraph 57 hereof. Clearly, no further licenses issued from Defendant DeVito, as his 1999 grant to Defendants Valli and Gaudio was express and “exclusive,” and left no residual derivative rights for Defendant DeVito to license or transfer to others. Whereas, neither Plaintiff nor Mr. Woodard authorized anyone to use or adapt the Work, the only possible source of such authorization to adapt the Work for a play, film, or other audiovisual medium after 1999, when the DeVito “transfer” was executed, was the Four

Seasons Partnership, who provided such authorization to, *inter alia*, Defendants Brickman and Elice.

61. Upon information and belief, sometime in late-2005, Defendant DeVito's "exclusive license" to Defendants Valli and Gaudio was appended as "Exhibit A" to the foundational production agreement for *Jersey Boys*, entered into by Defendants Valli, Gaudio, Brickman, Elice, DSHT, and Dodger Theatricals, and back-dated to May 1, 2004, as shown in *Exhibit 31*, at pp. 2-41. This "May 2004" agreement, *inter alia*, approved Defendants Brickman and Elice as "Bookwriters" for the play, and appointed Defendant McAnuff as director thereof, *id.*, at pp. 14-15; identified Defendant DSHT as "Producer" of the musical, *id.*, at p. 2, although Defendant Dodger Theatricals, rather than Defendant DSHT, was the sole "Dodger" signatory, *id.*, at p. 25; provided for an exclusive merger in favor of Defendant DSHT of all live stage musical rights in the life stories of Defendants Valli, Gaudio, DeVito, and Nick Massi in the United States, its territories and possessions, and Canada, upon a run of six months or more for the play, in a Broadway or West End theater, *id.*, at p. 5; accorded exclusive options to Defendant DSHT to produce and present the show elsewhere abroad, including Japan, the Far East, German-speaking countries, Scandinavia, Benelux, Spain, Portugal, Italy, Andorra, Israel, South Africa, Latin America, and Eastern Europe, in exchange for various lump-sum payments and royalties, *id.*, at pp. 6-8; permitted DSHT to lease and sublicense the rights obtained to other producers, in the U.S. and abroad, *id.*, at pp. 6, 8, 16; detailed the advances, royalties, and other compensation payable to all parties, apportioning "underlying rights," "compositional rights," "subsidiary rights," and other rights separately, *passim*; authorized royalties for Defendant McAnuff, who was not a signatory to the agreement, *id.*, at p. 12; and, in connection with all of the foregoing, assigned all "Third Party" rights acquired by Defendants Valli and Gaudio – including the "exclusive rights" obtained from Defendant DeVito in the Work – to Defendant DSHT. *Id.*, at pp. 4-5, 37-41. The agreement required that Defendants Valli and Gaudio indemnify Defendant DSHT against claims brought by any of the "Third Parties" (namely, Defendant DeVito and Nick Massi) as a result of any failure to obtain the necessary "Third Party" rights, *Exhibit 31*, at pp. 4-5, and included general representations, warranties, and indemnifications from Defendants Valli and Gaudio concerning elements contributed thereby which might infringe the rights of other third parties. *Id.*, at pp. 18-19. The agreement included similar representations,

1 warranties, and indemnifications by Defendants Brickman and Elice concerning the *libretto*, in favor
2 of Defendant DSHT, *id.*, at pp. 19-20, but also provided that Defendants Valli, Gaudio, Brickman,
3 and Elice, would be named as additional insureds in Defendant DSHT's general liability and errors
4 and omission insurance policies for the production of the play. *Exhibit 31*, at pp. 18, 20. One
5 manifest intention of this May 1, 2004 agreement, made effective before the first performance of
6 *Jersey Boys* in La Jolla, California, but after the initial *libretto* was drafted, was to transfer the
7 exclusive right to prepare and produce derivative works based upon or adapted from the Work, in
8 the medium of live stage musicals, from Defendants Valli and Gaudio to Defendant DSHT as of that
9 date. *Id.*, at p. 5.

10 62. Upon information and belief, the "Producer" status attributed to Defendant DSHT in
11 the foregoing May 1, 2004 agreement, and many of the rights and obligations of "Producer"
12 thereunder, were assigned or further sublicensed to Defendant Dodger Theatricals, billed as the
13 primary producer of *Jersey Boys* on Broadway, and in touring productions throughout the United
14 States, although Defendant DSHT is also sometimes credited as producer, particularly in foreign
15 productions, such as the production of *Jersey Boys* in London's West End. Upon information and
16 belief, Defendants DSHT and/or Dodger Theatricals subsequently sublicensed these rights to others,
17 and ultimately assigned them to Defendant Jersey Boys Broadway, which then sublicensed the rights
18 to additional parties, including Defendant JB Viva Vegas, Jersey Boys Records, other limited
19 partnerships in which Defendant Dodger Theatricals holds ownership interests, and additional
20 persons and entities whose identities are not now known to Plaintiff. Nonetheless, upon information
21 and belief, Defendants DSHT, Dodger Theatricals, Jersey Boys Broadway, and their dominant
22 principal, Michael David, in consultation with Defendants Valli and Gaudio, are responsible for the
23 dissemination and performance of *Jersey Boys* throughout the World, and, in consultation with
24 Defendants Valli, Gaudio, Brickman, Elice, and McAnuff, for customization and/or translation of
25 the *libretto*, and staging of the production, for local and foreign venues.

26 63. In this Circuit, the co-author/co-owner of a "joint work" may not issue an exclusive
27 license under a copyright, as he or she does not hold exclusive rights in a work, but shares them,
28 indivisibly, and non-exclusively with the other co-owner(s). A co-owner may assign his or her

1 ownership share in any of the exclusive rights in a copyrighted work, but if less than all of his or her
2 rights in the Work are so assigned, the transferee is entitled only to the “protections and remedies”
3 accorded by the Copyright Act, as opposed to “rights and benefits” thereof, and may not further
4 license, sublicense, or assign those rights to others, in the absence of his or her co-owner’s consent,
5 under 17 U.S.C. § 201(d)(2). Thus, Defendant DeVito’s August 13, 1999 grant of an “exclusive
6 license” to Defendants Valli and Gaudio either: (a) was void insofar as it purported to cover the
7 Work, and conferred no rights upon Defendants Valli and Gaudio to use, reference, or adapt the
8 Work for *Jersey Boys*, or to authorize others to do so; (b) effected a complete assignment of
9 Defendant DeVito’s share in the subject exclusive rights to Defendants Valli and Gaudio, rendering
10 them accountable to Plaintiff as co-owners thereof, but prohibiting them from sublicensing, leasing,
11 or assigning said rights to Defendants Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, or any
12 other person, under 17 U.S.C. § 201(d)(2), in the absence of Plaintiff’s express consent, because the
13 transfer did not encompass Defendant DeVito’s entire interest in all exclusive rights in the Work;
14 or, (c) must be construed as a non-exclusive license, which Defendants Valli and Gaudio could not
15 further license, sublicense, assign, or otherwise transfer, in the absence of Plaintiff’s express consent.
16 Under any of these constructions, *Jersey Boys* remains an unlicensed, unauthorized, unlawful
17 derivative work, based on the Work, and the *libretto* (including all drafts thereof), staging,
18 performance, and distribution of *Jersey Boys*, as well as the various sublicenses, authorizations, and
19 assignments pertaining thereto, granted by and among Defendants Valli, Gaudio, DSHT, Dodger
20 Theatricals, and Jersey Boys Broadway, comprise infringements of Plaintiff’s copyrights in and to
21 the Work.

22 64. In the alternative, under Fed. R. Civ. P. 8(d)(2)-(3), pursuant to the reasoning of other
23 Circuits, and certain copyright commentators, Defendant DeVito’s August 13, 1999 grant of
24 exclusive rights to Defendants Valli and Gaudio effected a complete assignment of his share in the
25 subject rights thereto, rendering Defendants Valli and Gaudio accountable to Plaintiff as co-owners
26 of said rights in the Work thereafter, and permitting said Defendants to assign the rights so acquired,
27 or portions thereof to Defendants DSHT and/or Dodger Theatricals, making Defendants DSHT
28 and/or Dodger Theatricals co-owners of such rights with Plaintiff, and accountable to Plaintiff for

1 her fifty (50%) percent *pro rata* share of profits obtained by the said Defendants from the use and
2 benefit of the Work, from the date of such assignment (May 1, 2004) to the date on which Defendant
3 Dodger Theatricals assigned such rights to Defendant Jersey Boys Broadway, at which point, Jersey
4 Boys Broadway and Plaintiff became co-owners of such rights.

5 65. Upon information and belief, Defendants Valli and Gaudio knew, or should have
6 known, in 1999, and at all relevant times thereafter, that Defendant DeVito could not have written,
7 and did not write the Work; was not the sole (or even primary) author thereof; and, lacked authority
8 to issue an “exclusive license” thereto. Moreover, any continuing use and/or licensing of the Work
9 by said Defendants constitutes willful copyright infringement, as said Defendants have been aware
10 of Plaintiff’s claims since at least as early as December 31, 2007, but have nonetheless declined to
11 negotiate with Plaintiff for a license, or to halt the infringing production. Alternatively, pursuant to
12 the reasoning set forth in Paragraph 64 hereof, any such use and/or licensing of the Work in the
13 United States by said Defendants gives rise to additional accounting obligations to Plaintiff, and
14 obligations to pay to Plaintiff, her fifty (50%) percent *pro rata* share, of profits obtained from such
15 use, licensing, and/or other exploitation or adaptation of the Work, during all periods in which
16 Plaintiff and Defendants Valli and Gaudio were, or are, co-owners of such rights..

17 66. Upon information and belief, Defendants Brickman, Elice, and McAnuff, knew, at
18 all relevant times, from the date(s) they first received and read the Work, that Defendant DeVito did
19 not write it, and were further aware, or should have been aware, of Mr. Woodard’s co-authorship
20 thereof, when the *Jersey Boys libretto* was drafted, and/or when *Jersey Boys* was staged, directed,
21 and produced. Such knowledge also must be imputed to Defendants Skunk and Getting Home, the
22 “loan-out” companies controlled by Defendants McAnuff and Elice.

23 67. Upon information and belief, Defendants DSHT, Dodger Theatricals, Jersey Boys
24 Broadway, and Jersey Boys Records, through their principals, Defendant David and Edward Strong,
25 and through Defendant McAnuff, a founder member of Dodger Theatricals, knew, at all relevant
26 times, that Defendant DeVito did not write the Work; were aware of Mr. Woodard’s co-authorship
27 thereof when the initial treatment for *Jersey Boys* was transformed and adapted from the Work
28 and/or when *Jersey Boys* was staged, directed, and produced; and, knew that the May 1, 2004

1 “assignment” from Defendants Valli and Gaudio did not convey sufficient rights to permit the use
2 or adaptation of the Work for *Jersey Boys* or collateral products, such as the *Jersey Boys Cast*
3 *Recording* or *Jersey Boys Book*; the distribution of copies of the Work to performers in the play; or,
4 the sublicensing, leasing, or further assignment of any rights therein, but said Defendants,
5 nonetheless, have refused to negotiate with Plaintiff for a license, or to halt their infringing
6 productions, rendering their aforesaid actions willful copyright infringement. Alternatively, in the
7 event that the transfer of rights in the Work from Defendants Valli and Gaudio to Defendants DSHT
8 and/or Dodger Theatricals is deemed valid, under the reasoning set forth in Paragraph 64, such use
9 and/or licensing of the Work in the United States by said Defendants, and by Jersey Boys Broadway,
10 Dodger Theatricals’ subsequent transferee, gives rise to additional accounting obligations to
11 Plaintiff, and obligations to pay to Plaintiff, her fifty (50%) percent *pro rata* share, of profits
12 obtained from such use, licensing, and/or other exploitation of or benefit from the Work, during all
13 periods in which Plaintiff and Defendants DSHT, Dodger Theatricals, and/or Jersey Boys Broadway
14 were, or are, co-owners of such rights..

15 68. Upon information and belief, Defendant JB Viva Vegas, through principals it shares
16 with Defendants Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys Records, namely,
17 Defendant David, knew, at all relevant times, of both this litigation and Plaintiff’s claims of co-
18 ownership of the Work, when said Defendant began producing, and debuted, the permanent
19 production of *Jersey Boys* in this District and Division, rendering its conduct willful, reckless, or,
20 in utter disregard for Plaintiff’s rights.

21 69. Even if Defendant DeVito’s August 13, 1999 exclusive license or assignment of
22 certain of his rights to Defendants Valli and Gaudio were deemed sufficient to authorize one or more
23 of the complained of activities in the United States, such license or assignment could not validate
24 the export of *Jersey Boys* to the United Kingdom, Canada, or Australia, by Defendants, Valli,
25 Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and/or Jersey Boys Broadway, or
26 excuse Defendant DeVito’s authorization of same, as the laws of these countries require the consent
27 of all co-owners of a work before even a non-exclusive license may be issued to a third party, and
28 Plaintiff has not provided such consent to any Defendant herein.

70. According to media reports, as shown in the true copies of news articles from the *Cincinnati Enquirer* and *Cleveland Plain Dealer* attached hereto as *Exhibit 32*, *Jersey Boys* is garnering gross revenues of approximately three hundred million (\$300,000,000.00) dollars per year, with profits exceeding one hundred fifty million (\$150,000,000.00) dollars per year, and a present life expectancy of at least ten years, *Exhibit 32*, at pp. 3-4, making anticipated lifetime profits from performances of the show alone in excess of 1.5 billion dollars. These reports also indicate that the Broadway *Jersey Boys* production rakes in profits of approximately thirty-three million (\$33,000,000.00) dollars annually, and there are currently five additional productions, performing the show throughout the United States, and in the U.K., Canada, and Australia. In July 2008, *Jersey Boys* set a world's box office record in Cleveland, Ohio, with nearly 1.9 million dollars in ticket sales for one week's worth of performances at the State Theater in Playhouse Square. *Exhibit 32*, at p. 6. The "permanent" production of *Jersey Boys* in this District and unofficial Division debuted in April 2008 – the result of a multi-million dollar deal – and upon information and belief, additional U.S. and foreign tours are planned. Upon information and belief, the *Jersey Boys Cast Recording*, which contains excerpts from the *libretto*, pursuant to the "authorization(s)" of Defendants Valli, Gaudio, Brickman, Elice, DSHT, Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys Records, was the "No. 1" Broadway cast recording in July 2006 and February 2007, and is consistently an Amazon.com's best-seller, as is the *Jersey Boys Book*, which has distributed nationwide. As reported in the true copy of a November 2007 article from the *New York Post*, attached hereto as *Exhibit 33*, a motion picture version of *Jersey Boys* has long been expected, *Exhibit 33*, at pp. 2-3, and upon information and belief, a deal for such a move has been struck between Defendants Valli, Gaudio, Brickman and Elice, and GK Films, LLC, with Defendants Brickman and Elice set to author the adapted screenplay. Upon information and belief, Defendant DeVito's profits from the production up to this point have reached seven figures, and continue to increase as new touring companies and media outlets are added, while Defendants Valli, Gaudio, Brickman, Elice, DSHT, Dodger Theatricals, and Jersey Boys Broadway, receive profits vastly exceeding this amount. Meanwhile, Mr. Woodard, whose writings inspired, transformed, and were adapted for the show, and whose words appear therein, was never paid a penny for his efforts, and

Plaintiff continues to suffer financially from his early death. Defendant DeVito has a duty to account to Plaintiff, and to pay Plaintiff her full share of profits attributable directly or indirectly to, *inter alia*, the use and/or adaptation of the Work for *Jersey Boys*, and collateral products, whether by license or assignment, and upon information and belief, that share exceeds, or will exceed, six million five hundred thousand (\$6,500,000.00) dollars. Defendant DeVito also must account to Plaintiff for profits attributable to other derivative works based upon the Work, as published reports indicate that Defendant has been working with a New York writer to update the Work, or prepare a new work based thereon. *E.g.*, *Exhibit 24*, at p. 6. Finally, Defendant DeVito must compensate Plaintiff for his breaches of contract, unjust enrichment, breaches of the implied covenant of good faith and fair dealing, acts of fraudulent concealment, conversion of Plaintiff's royalty share, and acts of foreign copyright infringement. Meanwhile, the remaining Defendants are accountable to Plaintiff for copyright infringement, vicarious copyright infringement, and contributory copyright infringement, as a result of their unauthorized uses, adaptations, performances, and distribution of copies of the Work; their acts of foreign copyright infringement, and, in the alternative, as to Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and *Jersey Boys Broadway*, for fifty (50%) percent of all profits obtained from the use and benefit of the Work, during the periods in which they co-owned relevant rights with Plaintiff.

71. Defendants, unless enjoined, will continue their unlawful and infringing conduct, and Plaintiff has no adequate remedy at law.

COUNT I

[Declarations of Joint Work, Copyright Ownership, and Invalidity of Exclusive License by Co-Owner]

(Against Defendant DeVito)

72. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 71 hereinabove, as if fully set forth in this Paragraph 72.

73. Although Mr. Woodard was the primary author of the Work, Mr. Woodard and Defendant DeVito collaborated on the Work between 1988 and 1990, and contributed independently copyrightable content thereto, with the intention that their respective contributions be merged into

1 inseparable or interdependent parts of a unitary whole.

2 74. Both Mr. Woodard and Defendant DeVito knew and understood that the Work was
3 a “joint work,” before and during its creation, and intended that they be considered “co-authors”
4 thereof, as evidenced, *inter alia*, by their December 1, 1988 letter agreement and subsequent
5 correspondence.

6 75. The Work is a “joint work” within the meaning of Section 101 of the Copyright Act
7 [17 U.S.C. § 101].

8 76. Whereas, copyright ownership vests, initially, in the authors of a work, and the
9 authors of a joint work are co-owners thereof, under Section 201(a) of the Copyright Act [17 U.S.C.
10 § 201(a)], the copyrights in the Work vested initially in Mr. Woodard and Defendant DeVito, and
11 they were co-owners thereof.

12 77. When the copyrights in the Work initially vested in Mr. Woodard and Defendant
13 DeVito, as alleged in Paragraph 71 hereof, Mr. Woodard qualified as a copyright “claimant” with
14 respect to the Work, under 37 C.F.R. § 202.3(a)(3).

15 78. U.S. Copyright Reg. No. TXu 454 118, obtained by Defendant DeVito, in his name,
16 on January 11, 1991, was secured, and has been held, in constructive trust for Mr. Woodard and
17 Plaintiff, and must be supplemented to reflect Mr. Woodard’s authorship of the Work, under 17
18 U.S.C. § 201(a), and his status as an original copyright claimant, under 37 C.F.R. § 202.3(a)(3), so
19 that Plaintiff may record her status as heir and successor to his interests, under 17 U.S.C. § 205.

20 79. Upon Mr. Woodard’s death on May 25, 1991, Plaintiff, an “author’s widow,” under
21 17 U.S.C. § 101, inherited Mr. Woodard’s entire ownership interest in the Work, in accordance with
22 17 U.S.C. § 201(d)(1), and became co-owner of the Work with Defendant DeVito, under 17 U.S.C.
23 § 201(d)(1), holding an indivisible fifty (50%) percent ownership interest therein.

24 80. As a co-owner, Plaintiff has the right to publish and exploit the Work independently
25 of Defendant DeVito, and to enjoy, exercise, and enforce all other rights, benefits, and causes of
26 action accorded to copyright owners with respect thereto, pursuant to, *inter alia*, 17 U.S.C. §§ 106,
27 501(b), 502, 503, 504, and 505, subject only to the prohibition on the issuance of exclusive licenses
28 by co-owners of copyrighted works, and Plaintiff’s duty to account to Defendant DeVito for his

1 share of profits obtained from Plaintiff's use and exploitation of the Work, if any.

2 81. Defendant DeVito has wrongfully repudiated Mr. Woodard's co-authorship of the
3 Work, and Plaintiff's current ownership interest therein, intending to appropriate all profits from the
4 use and exploitation of the Work for himself.

5 82. A co-owner of a copyrighted work may not issue an exclusive license thereunder,
6 without the consent of all other co-owners thereof, as a co-owner does not exclusively possess
7 exclusive rights in a copyrighted work, but shares them, indivisibly, with his or her co-owner(s).

8 83. Defendant DeVito, as a co-owner of the Work, lacked the power, authority, and/or
9 requisite ownership interest to issue an exclusive license to Defendants Valli and Gaudio thereunder,
10 and the "exclusive license" Defendant DeVito granted thereto, on or about August 13, 1999, was
11 *void ab initio*, with no legal effect.

12 84. Alternatively, whereas, Defendant DeVito, as a co-owner of the Work, lacked the
13 power, authority and/or requisite ownership interest to issue an exclusive license to Defendants Valli
14 and Gaudio thereunder, the "exclusive license" Defendant DeVito granted thereto, on or about
15 August 13, 1999, must be construed as a non-exclusive license, which Defendants Valli and Gaudio
16 could not lawfully license, sublicense, or assign, under 17 U.S.C. § 201(d)(2), in the absence of
17 Plaintiff's express consent.

18 85. A co-owner of a copyrighted work may assign his own share in the exclusive rights
19 in a work, in whole or in part, under 17 U.S.C. § 201(d)(1), but unless he assigns all of his rights in
20 the work, the transferee is entitled, with respect to the rights assigned, only to the "protections and
21 remedies" accorded by the Copyright Act, and not to the "rights and benefits" conferred thereby, and
22 may not further license, sublicense, or assign those rights, under 17 U.S.C. § 201(d)(2). Thus, in the
23 alternative, under FED. R. CIV. P. 8(d)(2), Defendant DeVito's August 13, 1999 "exclusive license"
24 to Defendants Valli and Gaudio, constituted an assignment of Defendant DeVito's ownership interest
25 in the exclusive rights to prepare derivative works based upon the Work, in the media of, *inter alia*,
26 theater, film, and television, making Defendants Valli and Gaudio co-owners of said rights with
27 Plaintiff, with Plaintiff holding a fifty (50%) percent ownership interest therein, and Defendants
28 Valli and Gaudio holding a fifty (50%) percent ownership interest.

1 86. Upon information and belief, Defendants DeVito, Valli, and Gaudio intended that
2 Defendant DeVito's aforesaid grant of rights constitute an exclusive license or assignment,
3 encompassing all relevant rights in the Work (including Plaintiff's share), without regard for
4 Plaintiff's co-ownership of the Work or her ownership interests in the copyrights relating thereto.

5 87. As a result of Defendant DeVito's unfounded, allegations that he was the sole author
6 of the Work; as a result of Defendant DeVito's registration of the Work in his name, as sole author
7 and copyright claimant; as a result of Defendant DeVito's refusal to supplement said registration to
8 provide notice of Mr. Woodard's authorship, and status as a copyright claimant; as a result of
9 Defendant DeVito's refusal to recognize Plaintiff's co-ownership of the Work; as a result of
10 Defendant DeVito's issuance of an impermissible exclusive license thereunder; and, as a result of
11 Defendant DeVito's refusal to account to Plaintiff, notwithstanding Defendant DeVito's exploitation,
12 exclusive licensing, and/or assignment of rights in the Work for profit, an actual, present, and
13 justiciable controversy exists between Plaintiff and Defendant DeVito, as to whether the Work is a
14 "joint work;" whether Mr. Woodard was a co-author and co-owner thereof; whether Plaintiff is now
15 co-owner of the Work, with all rights, benefits, protections, and obligations attendant to this status;
16 and, whether Defendant DeVito's "exclusive license" to Defendants Valli and Gaudio is valid, void
17 or constituted an assignment, or a nontransferable, non-exclusive license.

18 88. Plaintiff seeks a Declaratory Judgment against Defendant DeVito, pursuant to 28
19 U.S.C. § 2201, decreeing that the Work is a "joint work" under 17 U.S.C. § 101; that Mr. Woodard
20 was a co-author of the Work, and co-owner thereof, under 17 U.S.C. § 201(a); that Mr. Woodard was
21 a qualified copyright claimant with respect to the Work, under 37 C.F.R. § 202.3(a)(3), when the
22 Work was first fixed in a tangible medium of expression; that U.S. Reg. No. Txu 454 118 has been
23 held in constructive trust by Defendant DeVito, and must be supplemented to reflect Mr. Woodard's
24 status as a co-author, co-owner, and copyright co-claimant; that Plaintiff is an "author's widow" with
25 respect to the Work, under 17 U.S.C. § 101; that Plaintiff inherited Mr. Woodard's ownership
26 interest in the Work upon his death, pursuant to 17 U.S.C. § 201(d)(1), and became co-owner thereof
27 with Defendant DeVito, holding an indivisible fifty (50%) percent ownership interest therein; that
28 Plaintiff may record, with the United States Copyright Office, her status as heir and successor to Mr.

1 Woodard's interests in the Work, under 17 U.S.C. § 205; that Plaintiff may publish and otherwise
2 exploit the Work, independently of Defendant DeVito, and enjoy, exercise, and enforce all other
3 rights, benefits, and causes of action accorded to copyright owners with respect thereto; that the
4 "exclusive license" granted by Defendant DeVito to Defendants Valli and Gaudio, in or around
5 August 1999, was *void ab initio*, with no legal effect, or, alternatively, constituted only a
6 nonexclusive license, which said Defendants could not license, assign, or otherwise transfer to the
7 remaining Defendants herein; or, that said "exclusive license" constituted an assignment of
8 Defendant DeVito's entire share in the subject exclusive rights to Defendants Valli and Gaudio,
9 under 17 U.S.C. § 201(d)(2), making them co-owners with Plaintiff thereof, holding collectively, a
10 fifty (50%) percent interest therein.

11 COUNT II

12 **[Equitable Accounting]**

13 (Against Defendant DeVito)

14 89. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 88
15 hereinabove, as if fully set forth in this Paragraph 89.

16 90. Co-owners of a copyrighted work are akin to tenants-in-common, with each co-owner
17 having an undivided, independent right to use the work, subject to a duty to account for profits to
18 the other co-owner(s).

19 91. As a co-owner of the Work, Mr. Woodard, during his lifetime, had a right to an
20 accounting from Defendant DeVito, of any and all profits obtained as a result of Defendant DeVito's
21 exploitation of the Work, and to payment of his fifty (50%) percent share of such profits..

22 92. As a result of Mr. Woodard's death, and Plaintiff's succession to his ownership
23 interest in the Work, Defendant DeVito has a continuing duty to account to Plaintiff for any and all
24 income derived from the exploitation of the copyrights therein. This duty requires Defendant DeVito
25 to disclose to Plaintiff all income that he has collected from such exploitation, and to pay Plaintiff
26 her fifty (50%) percent share of the profits.

27 93. By virtue of the December 1, 1988 letter agreement between Defendant DeVito and
28 Mr. Woodard, Defendant DeVito has a continuing duty to account to Plaintiff for "any profits arising

1 from” the Work, “whether they be in the form of royalties, advances, adaptations fees or whatever”
2 *Exhibit 10*, at p. 2 (emphasis added) – an obligation which extends beyond profits arising only from
3 the exploitation of copyrights, encompassing any profits attributable directly or indirectly to the
4 Work. This duty independently requires that Defendant DeVito disclose to Plaintiff all income he
5 has collected as a result of the Work, and pay to Plaintiff her fifty (50%) percent share of the profits.

6 94. Defendant DeVito’s duty to account to Plaintiff, as aforesaid, includes a duty to
7 account for profits obtained, derived, or flowing from, the “exclusive license” issued to Defendants
8 Valli and Gaudio, on or about August 13, 1999, whether same is characterized as a license or
9 assignment.

10 95. Plaintiff has demanded that Defendant DeVito account for profits arising from the
11 existence of the Work, and from Defendant DeVito’s direct or indirect exploitation of the copyrights
12 therein, but Defendant DeVito has failed and refused, and continues to fail and refuse, to render an
13 accounting or pay Plaintiff her share of the profits.

14 96. The precise nature and extent of Defendant DeVito’s income attributable to the Work
15 are unknown to Plaintiff at the present time, and Defendant DeVito’s profits cannot be determined
16 without an accounting of his transactions relating to, *inter alia*, the Work, *Jersey Boys*, the *Jersey*
17 *Boys Book*, the *Jersey Boys Cast Recording*, which includes portions of the *libretto*, and the motion
18 picture version of *Jersey Boys* which is planned. Moreover, the facts and accounts presented are so
19 complex that an investigation of Defendant DeVito’s accounts is necessary to effect justice between
20 the parties, and establish the value of Plaintiff’s interests.

21 97. Plaintiff seeks an Order from this Court that Defendant DeVito render an accounting
22 to Plaintiff of the amounts owed, as well as a Judgment against Defendant, for a sum to be
23 determined in the accounting, with prejudgment and post-judgment interest, as allowed by law.

24 **COUNT III**

25 **[Breach of Contract]**

26 (Against Defendant DeVito)

27 98. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 97
28 hereinabove, as if fully set forth in this Paragraph 98.

1 99. The December 1, 1988 letter agreement between Mr. Woodard and Defendant DeVito
2 attached hereto as *Exhibit 10*, constitutes a valid and enforceable contract, which was not
3 extinguished by Mr. Woodard's death.

4 100. Mr. Woodard performed fully under the December 1, 1988 letter agreement, by
5 writing and completing the Work, and according top billing to Defendant DeVito on the title page,
6 while showing both parties as co-authors of the Work.

7 101. Plaintiff succeeded Mr. Woodard as a party to the December 1, 1988 letter agreement
8 upon his death, and Defendant DeVito's obligations and duties to Mr. Woodard thereunder are
9 obligations and duties now owed to Plaintiff.

10 102. Defendant DeVito has breached the December 1, 1988 letter agreement between the
11 parties by removing Mr. Woodard's name from the title page of the Work and obliterating the
12 copyright notice placed by Mr. Woodard thereon; by distributing copies of the Work which do not
13 credit Mr. Woodard as co-author, and by misrepresenting the nature and extent of Defendant
14 DeVito's authorship.

15 103. Defendant DeVito has breached the December 1, 1988 letter agreement between the
16 parties by tendering an application for copyright registration with the United States Copyright
17 Office, which failed to credit Mr. Woodard as co-author of the Work, or to list Mr. Woodard as a
18 copyright claimant.

19 104. Defendant DeVito has breached the December 1, 1988 letter agreement between the
20 parties by refusing to share equally with Plaintiff all profits arising from the Work of whatever
21 nature, and by refusing to account to Plaintiff for such profits.

22 105. Defendant DeVito has breached the December 1, 1988 letter agreement between the
23 parties by transferring, and/or attempting to transfer, exclusive rights in the Work to Defendants
24 Valli and Gaudio, when the agreement does not permit such assignments, and contemplates that the
25 rights and obligations thereunder shall be binding upon Mr. Woodard's and Defendant DeVito's
26 heirs.

27 106. Defendant DeVito has breached the December 1, 1988 letter agreement between the
28 parties by permitting others to use and exploit the Work, while actively attempting to conceal this

1 fact from Plaintiff.

2 107. Defendant DeVito has repudiated the December 1, 1988 letter agreement between the
3 parties by absolutely and unconditionally refusing to perform thereunder, without just excuse.
4 Plaintiff rejects this repudiation, however, and Defendant DeVito remains subject to all obligations
5 of the letter agreement.

6 108. Plaintiff has been damaged by Defendant DeVito's breaches of contract, beyond the
7 loss of Plaintiff's rightful share of profits thereunder, and Plaintiff is entitled to recover from
8 Defendant DeVito, direct damages, as well as foreseeable, consequential damages resulting from
9 Defendant DeVito's breaches of contract, with prejudgment and post-judgment interest, as allowed
10 by law. Plaintiff is unable to ascertain, at present, the full extent of the direct and consequential
11 monetary damages Plaintiff has suffered by reason of Defendant DeVito's aforesaid breaches of
12 contract, but upon information and belief, if Defendant DeVito's conduct continues, Plaintiff will
13 sustain damages in an amount exceeding seven million five hundred thousand (\$7,500,000.00)
14 dollars, or such other amount, to be proved at trial.

15 **COUNT IV**

16 **[Unjust Enrichment]**

17 (Against Defendant DeVito)

18 109. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 108
19 hereinabove, as if fully set forth in this Paragraph 109.

20 110. As a result of Defendant DeVito's foregoing failures to account to Plaintiff for profits
21 arising from the Work, and in the course of Defendant DeVito's foregoing breaches of contract,
22 Defendant DeVito has received, directly or indirectly, funds to which he is not entitled, in amounts
23 to be determined at trial, and has been unjustly enriched thereby.

24 111. Defendant DeVito holds said funds in trust for Plaintiff, the rightful owner, and is
25 liable to pay and transfer same to Plaintiff.

26 112. Plaintiff is entitled to, and requests, Judgment against Defendant DeVito for her
27 damages, together with pre-judgment and post-judgment interest, costs, imposition of a constructive
28 trust, and other just and proper relief.

COUNT V

[Breach of Implied Covenant of Good Faith and Fair Dealing

In the Performance of Contractual Obligations]

(Against Defendant DeVito)

113. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 112 hereinabove, as if fully set forth in this Paragraph 113.

114. Mr. Woodard and Defendant DeVito had a special and confidential relationship at the time they entered into, and executed, the December 1, 1988 letter agreement. Specifically, Mr. Woodard reposed special confidence and trust in Defendant DeVito due to his position and stature as an original member of the Four Seasons – the band with which Mr. Woodard had been obsessed since childhood – and, due to the friendship that had developed between the parties since Mr. Woodard’s first interview with Defendant DeVito in 1981, and Defendant DeVito was aware, and/or should have been aware, of Mr. Woodard’s special confidence and trust. As a result of his position, and the opportunity Defendant DeVito presented – to write what would have been the first book ever published about the Four Seasons, with full credit for his efforts – Defendant DeVito had considerable influence over Mr. Woodard, and Mr. Woodard relied upon and trusted Defendant DeVito to treat him fairly. As a result of this special confidence, Mr. Woodard de-emphasized his law practice and focused upon the Work, without compensation, at a time when he was suffering from lung cancer; had a wife and three children to support; and expenses were reaching a lifetime high due to his terminal illness, all because he believed that his life-long idol, and friend of seven years, would see the project through with him to completion (*i.e.*, through publication and/or adaptation of the Work), and would cooperate in areas extending beyond the four corners of the parties’ agreement, such as the selection and compilation of photographs for the Work; arrangements for the final design and packaging therefor; collaboration on the screenplay the parties planned to develop based upon the Work; and, looking after Mr. Woodard’s interests in appreciation, recognition, and just payment for his efforts, including Mr. Woodard’s financial needs and those of his family following his death, by reporting any opportunities that arose concerning the Work, and promptly accounting for, and remitting, Mr. Woodard’s share of any profits arising therefrom.

1 115. The foregoing relationship of special confidence survived Mr. Woodard's death, and
2 extended to Plaintiff, who similarly reposed confidence and trust in Defendant DeVito, as a result
3 of his celebrity, and his special relationship with her husband, in the matter to which her husband
4 had devoted the final years of his life. Moreover, Plaintiff believed that the Mass Card she received
5 from Defendant DeVito in mid-January 1991, as her husband approached death, was a symbol of
6 continued caring by Defendant DeVito, and an acknowledgment of this special relationship of
7 confidence. Defendant DeVito was also aware, and/or should have been aware of Plaintiff's
8 confidence, as it was manifest in Plaintiff's later contact with Defendant DeVito, through her sister-
9 in-law, Cindy Woodard Ceen, to discuss ways in which the parties might expedite publication of the
10 Work in view of the imminent Broadway debut of *Jersey Boys*, which Plaintiff believed would
11 maximize the Work's potential for success, to the parties' mutual benefit.

12 116. Due to the foregoing special and confidential relationship, Defendant DeVito owed
13 a duty to Mr. Woodard and Plaintiff, who reposed their confidence in him, similar to the duty of a
14 fiduciary, requiring Defendant DeVito to act in good faith, and to volunteer material information,
15 with due regard for their interests, in the performance of his obligations under their December 1,
16 1988 agreement, and this duty is ongoing, and remains in effect.

17 117. Defendant DeVito has breached the implied covenant of good faith and fair dealing
18 in the performance of his contractual obligations, by acting in a manner that is unfaithful to the
19 purpose of the parties' December 1, 1988 agreement, and denying the justified expectations of Mr.
20 Woodard and Plaintiff, by registering the copyrights in and to the Work in his own name, and
21 concealing this fact from both Mr. Woodard and Plaintiff; by licensing and/or assigning exclusive
22 rights in the Work to others and concealing these facts from Plaintiff; by receiving (and spending)
23 royalties and/or other payments arising from the use and adaptation of the Work, while concealing
24 their existence from Plaintiff, and then refusing to pay under the contract when these concealments
25 came to light; and, by publicly disparaging and humiliating Mr. Woodard's memory, by disavowing
26 Mr. Woodard's authorship of the Work, and mischaracterizing both Mr. Woodard, and his
27 contribution, in, *inter alia*, recorded podcast interviews, major newspaper interviews, and the very
28 magazine in which Mr. Woodard's detailed, caring article about Defendant DeVito, his family, and

1 his earliest bands had first appeared; and, by treating Plaintiff as if she did not exist, and refusing to
2 acknowledge, publicly or privately, that he is obligated to her by contract.

3 118. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
4 has sustained substantial economic losses, including past and future compensation, and other
5 economic benefits, such as those which may have flowed from timely publication of the Work.
6 Plaintiff has also sustained loss of financial stability, peace of mind and future security and has
7 suffered embarrassment, humiliation, mental and emotional distress and discomfort, all to Plaintiff's
8 detriment and damage, in amounts not yet fully ascertained.

9 119. In acting as described above, Defendant DeVito acted oppressively, maliciously,
10 fraudulently, and outrageously towards Plaintiff, with conscious disregard for Plaintiff's known
11 rights, and with the intention of causing unjust and cruel hardship to Plaintiff. In acting in a
12 deliberate, cold, callous, and intentional manner, Defendant DeVito intended to injure, and injured
13 Plaintiff, and Plaintiff requests the assessment of exemplary and/or punitive damages against
14 Defendant DeVito, in an amount sufficient to punish and make an example of him, in addition to
15 compensatory damages, together with pre-judgment and post-judgment interest, as permitted by law,
16 Plaintiff's attorney's fees and the costs of this action, and the imposition of a constructive trust on
17 all of Defendant DeVito's income arising from or relating to the Work, including, but not limited
18 to, income arising from the licensing or assignment of rights therein for *Jersey Boys*.

19 **COUNT VI**

20 **[Constructive Fraud]**

21 (Against Defendant DeVito)

22 120. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 119
23 hereinabove, as if fully set forth in this Paragraph 120

24 121. The special and confidential relationship between Mr. Woodard and Defendant
25 DeVito, and between Plaintiff and Defendant DeVito, as aforesaid, gave rise, *inter alia*, to a duty to
26 disclose, such that non-disclosure is constructive fraud, and becomes the equivalent of a fraudulent
27 concealment, even in the absence of fraudulent intent, where it misleads the one reposing confidence
28 in the other to his prejudice, and/or gains advantage to the person at fault.

1 122. Defendant DeVito's failures to speak and disclose to Plaintiff: (a) that Defendant
2 DeVito had registered the copyrights in the Work in his own name; (b) that Defendant DeVito had
3 issued an "exclusive license" or assignment to Defendants Valli and Gaudio, covering certain rights
4 in and to the Work; (c) that Defendant DeVito was to obtain, and actually obtained, royalties and/or
5 other compensation as a result of said license or assignment, which were required to be shared with
6 Plaintiff in accordance with her co-ownership of the Work, and the parties' December 1, 1988
7 agreement; (d) that *Jersey Boys* was adapted from the Work, which had been referenced and used
8 extensively in connection therewith; (e) that the "exclusive license" conveyed by Defendant DeVito
9 to Defendants Valli and Gaudio had been further licensed and/or assigned to, *inter alia*, Defendants
10 Brickman, Elice, DSHT, Dodger Theatricals, Jersey Boys Broadway, and JB Viva Vegas, all of
11 whom were profiting from derivative works based upon the Work; (f) that Defendant DeVito and/or
12 his attorney, Jay Julien, had been receiving weekly and monthly statements concerning Defendant
13 DeVito's royalties and/or profits from the licensing of the Work; (g) that Defendant DeVito had
14 worked, was working, or is working with another writer, to prepare an autobiography that is
15 derivative of the Work; and, (h) that Peter C. Bennett, counsel to the Four Seasons Partnership, sent
16 a demand letter to Defendant DeVito, through his attorney Jay Julien, indicating that Defendant
17 DeVito was prohibited from publishing an autobiography, due to provisions in his separation
18 agreement with the Four Seasons, all of which provided gains and advantages to Defendant DeVito
19 to the detriment of Mr. Woodard and Plaintiff, constitute constructive fraud. Moreover, Mr.
20 Woodard and Plaintiff justifiably relied on Defendant DeVito's silence, in view of the parties'
21 special and confidential relationship, and took no steps to enforce their co-ownership and contractual
22 rights against him (believing, erroneously, that same had not been violated or breached); to demand
23 an accounting of profits therefrom (believing, erroneously, that no profits had been obtained), or to
24 pursue actions against the remaining Defendants herein, for their infringing activities (unaware that
25 there was any connection between *Jersey Boys* and the Work).

26 123. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
27 has sustained substantial economic losses, including past and future compensation, and other
28 economic benefits, such as those which may have flowed from timely publication of the Work.

1 Plaintiff has also sustained loss of financial stability and future security, all to Plaintiff's detriment
2 and damage, in amounts not yet fully ascertained.

3 124. Plaintiff seeks Judgment against Defendant DeVito for damages resulting from his
4 acts of constructive fraud, together with pre-judgment and post-judgment interest as provided by law,
5 Plaintiff's attorney's fees and the costs of this action, and the imposition of a constructive trust on
6 all of Defendant DeVito's income arising from or relating to the Work, including, but not limited
7 to, income arising from the licensing or assignment of rights therein for *Jersey Boys*.

8 COUNT VII

9 **[Fraud and Fraudulent Concealment]**

10 (Against Defendant DeVito)

11 125. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 124
12 hereinabove, as if fully set forth in this Paragraph 125.

13 126. On or about January 19, 1991, Defendant DeVito falsely, and fraudulently, with the
14 intent to deceive and defraud Plaintiff, sent a five-year, pre-paid, Catholic Mass Card thereto, in
15 apparent "sympathy" for Mr. Woodard's terminal illness, just eight days after registering the Work's
16 copyrights in Defendant DeVito's own name, to provide false assurances to Mr. Woodard and
17 Plaintiff that the parties' special, confidential relationship remained intact, and that Defendant
18 DeVito cared about Mr. Woodard and Plaintiff, as he took the first step in his fraudulent scheme to
19 deprive them of their rights in and to the Work, and of the opportunity to realize profits therefrom.
20 *Exhibit 15*, at p. 2.

21 127. On September 21, 2005, Defendant DeVito falsely, and fraudulently, with the intent
22 to deceive and defraud Plaintiff, represented to Plaintiff and Mrs. Ceen, in a message transmitted
23 through Charles Alexander on September 22, 2005, that Defendant DeVito "loved Rex [Woodard],"
24 and "would [help] in any way he could" with Plaintiff's efforts to publish the Work. *Exhibit 20*, at
25 p. 2.

26 128. On September 22, 2005, Defendant DeVito falsely, and fraudulently, with the intent
27 to deceive and defraud Plaintiff, represented to Plaintiff, through a conversation with Mrs. Ceen, that
28 Defendant DeVito remained interested in publishing the Work with Plaintiff, but wished to update

1 the Work, had lost his copy, and needed another, when in fact, Defendant DeVito intended to delay
2 and obstruct Plaintiff's ongoing efforts to publish the Work, and made such false statements to keep
3 Plaintiff at bay, prior to the debut of *Jersey Boys* on Broadway.

4 129. On November 2, 2005, Defendant falsely, and fraudulently, with the intent to deceive
5 and defraud Plaintiff, represented to Plaintiff, through Mrs. Ceen, using his attorney, Jay Julien, as
6 an instrumentality of deceit, that the Work was "not saleable," and could not be published in its
7 present form, when in fact, Defendant DeVito had already licensed or transferred significant
8 exclusive rights in the Work in exchange for substantial consideration. These statements were also
9 designed to keep Plaintiff at bay for a lengthy, indeterminate period, as *Jersey Boys* was prepared
10 for its official Broadway debut four days later, and, to deprive Plaintiff of the opportunity to realize
11 profits from said derivative work.

12 130. The foregoing representations were false in fact, and known to be false by Defendant
13 DeVito at the time they were so made.

14 131. Mr. Woodard and Plaintiff relied upon Defendant DeVito's foregoing false
15 representations, and were thereby induced to maintain their confidence and trust in Defendant
16 DeVito; to refrain from enforcing their co-ownership, contractual, equitable, and statutory rights
17 against him (believing that same had not been violated or breached); to refrain from demanding an
18 accounting of profits obtained by Defendant DeVito from the Work (believing that no such profits
19 had been obtained); to refrain from pursuing actions against the remaining Defendants herein, for
20 their infringing activities (unaware that there was any connection between *Jersey Boys* and the
21 Work); and, to refrain from further efforts to publish the Work (believing that Defendant DeVito was
22 reviewing the Work with the intention of updating it for publication).

23 132. Due to the parties' special and confidential relationship, described, *inter alia*, at
24 Paragraphs 114 and 115 hereof, Defendant DeVito owed a duty to Mr. Woodard and Plaintiff, who
25 he knew, or should reasonably have known, reposed their confidence in him, to speak, and to
26 disclose material facts peculiarly within his knowledge, and not within their fair and reasonable
27 reach.

28 133. Between 1991 and 2008, as detailed hereinabove, and evidenced by the *Exhibits*

1 hereto, Defendant DeVito breached his duty to disclose, and concealed material facts from Mr.
2 Woodard and/or Plaintiff, namely: (a) that Defendant DeVito had registered the copyrights in the
3 Work in his own name; (b) that Defendant DeVito had issued an exclusive license or assignment to
4 Defendants Valli and Gaudio, covering certain rights in and to the Work; (c) that Defendant DeVito
5 was to obtain, and actually obtained, royalties and/or other compensation as a result of said license
6 or assignment, which were required to be shared with Plaintiff in accordance with her co-ownership
7 of the Work, and the parties' December 1, 1988 agreement; (d) that *Jersey Boys* was adapted from
8 the Work, which had been referenced and used extensively in connection therewith; (e) that the
9 license granted by Defendant DeVito to Defendants Valli and Gaudio had been further licensed
10 and/or assigned to, *inter alia*, Defendants Brickman, Elice, DSHT, Dodger Theatricals, and Jersey
11 Boys Broadway, all of whom were profiting from derivative works based upon the Work; (f) that
12 Defendant DeVito and/or his attorney, Jay Julien, had been receiving weekly and monthly statements
13 concerning Defendant DeVito's royalties and/or profits from the licensing of the Work; (g) that
14 Defendant DeVito had worked, was working, or is working with another writer, to prepare an
15 autobiography that is derivative of the Work; and, (h) that Peter C. Bennett, counsel to the Four
16 Seasons Partnership, sent a demand letter to Defendant DeVito, through his attorney Jay Julien,
17 indicating that Defendant DeVito was prohibited from publishing an autobiography, due to
18 provisions in his separation agreement with the Four Seasons.

19 134. Mr. Woodard and Plaintiff justifiably relied on Defendant DeVito's silence, in view
20 of the parties' special and confidential relationship, and refrained from taking steps to enforce their
21 co-ownership and contractual rights against him (believing, erroneously, that same had not been
22 violated or breached); from demanding an accounting of profits from Defendant DeVito (believing,
23 erroneously, that no profits had been obtained), or from pursuing actions against the remaining
24 Defendants herein, for their infringing activities (unaware that there was any connection between
25 *Jersey Boys* and the Work).

26 135. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
27 has sustained substantial economic losses, including past and future compensation, and other
28 economic benefits, such as those which may have flowed from timely publication of the Work.

1 Plaintiff has also sustained loss of financial stability, peace of mind and future security and has
2 suffered embarrassment, humiliation, mental and emotional distress and discomfort, all to Plaintiff's
3 detriment and damage, in amounts not yet fully ascertained.

4 136. In acting as described above, Defendant DeVito acted oppressively, maliciously,
5 fraudulently, and outrageously towards Plaintiff, with conscious disregard for Plaintiff's known
6 rights, and with the intention of causing unjust and cruel hardship to Plaintiff. Moreover, in acting
7 in a deliberate, cold, callous, and intentional manner, Defendant DeVito intended to injure, and
8 injured Plaintiff, and Plaintiff requests the assessment of exemplary and/or punitive damages against
9 Defendant DeVito, in an amount sufficient to punish and make an example of him, in addition to
10 compensatory damages, pre-judgment and post-judgment interest, as permitted by law, Plaintiff's
11 attorney's fees and the costs of this action, and the imposition of a constructive trust on all of
12 Defendant DeVito's income arising from or relating to the Work, including, but not limited to,
13 income arising from the licensing or assignment of rights therein for *Jersey Boys*.

14 **COUNT VIII**

15 **[Conversion]**

16 (Against Defendant DeVito)

17 137. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 136
18 hereinabove, as if fully set forth in this Paragraph 137.

19 138. Beginning in the summer of 2004, continuing through to the present, and, upon
20 information and belief, on at least a weekly basis since October 2005, Defendant DeVito has
21 converted, to his own use, numerous royalty payments and/or other compensation attributable to the
22 use, licensing, and/or assignment of the Work, or exclusive rights therein, which were due, owed,
23 and properly belonged to Plaintiff, by virtue of her status as co-owner of the Work, and pursuant to
24 the parties' December 1, 1988 agreement, in amounts not yet fully ascertained.

25 139. Said conversions by Defendant DeVito of Plaintiff's rightful share of royalties and/or
26 profits were intentional, facilitated by, and accomplished through Defendant DeVito's foregoing acts
27 of fraud and fraudulent concealment, notwithstanding the existence of a special and confidential
28 relationship.

140. In acting as above described, Defendant DeVito acted oppressively, maliciously, fraudulently, and outrageously towards Plaintiff, with conscious disregard for Plaintiff's known rights, and with the intention of causing unjust and cruel hardship to Plaintiff. Moreover, in so acting in a deliberate, cold, callous, and intentional manner, Defendant DeVito intended to injure, and injured Plaintiff, and Plaintiff requests the assessment of exemplary and/or punitive damages against Defendant DeVito, in an amount sufficient to punish and make an example of him, in addition to compensatory damages, pre-judgment and post-judgment interest, as permitted by law, Plaintiff's attorney's fees and the costs of this action, and the imposition of a constructive trust on all of Defendant DeVito's income arising from or relating to the Work, including, but not limited to, income arising from the licensing or assignment of rights therein for *Jersey Boys*.

COUNT IX

[Copyright Infringement under the Laws of the United Kingdom]

(Against Defendant DeVito)

141. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 140 hereinabove, as if fully set forth in this Paragraph 141.

142. This is an action for copyright infringement under s 16(2) of the U.K. *Copyright, Designs and Patents Act 1988*, as amended ("CDPA 1988"), arising from, *inter alia*, Defendant DeVito's authorization of infringing acts in the United Kingdom.

143. Copyright infringement constitutes a transitory cause of action, and may be adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

144. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the United States and the United Kingdom are signatories, provides that works authored by citizens of signatory states must be accorded at least the same copyright protection in other signatory states as such states accord to works authored by their own citizens, and the United Kingdom accords such "national treatment" to U.S. authors, pursuant to, *inter alia*, Section 154(2) CDPA 1988, and Statutory Instrument 1989, No. 157, *The Copyright (International Conventions) (Amendment) Order 1989*. Thus, at the time the Work was completed, the copyrights therein were protected under U.K. law, without registration or any further formalities.

1 145. The Work is a work of “joint authorship” under s 10 (1) CDPA 1988, in that, *inter*
2 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
3 Woodard and Defendant DeVito made integral contributions thereto, which could not be removed
4 without fundamentally altering the whole; and, the parties worked together with a common design
5 or aim, and shared responsibility for the form of expression contained therein.

6 146. Whereas, the copyrights in a work vest initially with the author(s), under s 11(1)
7 CDPA 1988, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito,
8 as joint authors, and they were co-owners thereof, each having an indivisible fifty (50%) percent
9 interest therein.

10 147. Whereas, copyright is transmissible by testamentary disposition or operation of law,
11 under s 90(1) CDPA 1988, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
12 and became co-owner of all copyrights therein with Defendant DeVito.

13 148. Section 173(2) CDPA 1988 provides that the consent of all owners of a copyrighted
14 work is required to license the work.

15 149. One copyright co-owner may sue another co-owner for acts done without his license,
16 under s 16(2) CDPA 1988, and merely accounting to a co-owner for profits is insufficient to escape
17 liability for copyright infringement in such circumstances.

18 150. Pursuant to s 16(2) and s 173(2) CDPA 1988, copyright in a work is infringed by a
19 person who, without the license of all copyright owners does, or authorizes another to do, directly,
20 or indirectly, any of the acts restricted by the copyright, including, *inter alia*, copying the work;
21 issuing copies to the public in the European Economic Area (EEA) for the first time; communicating
22 the work to the public by electronic transmission; performing the work in public; renting or lending
23 the work to the public; and, making an adaptation of the work, as set forth in s 16(1) CDPA 1988,
24 and, pursuant to s 21(2) CDPA 1988, doing any of these acts in relation to an adaptation is also a
25 restricted act.

26 151. *Jersey Boys* is an adaptation of the Work, under s 21(3) CDPA 1988, as it is a
27 conversion of the Work into a dramatic work.

28 152. Defendant DeVito has infringed Plaintiff’s copyrights in the Work, under s 16(2)

CDPA 1988, by entering into an agreement with Defendants Valli and Gaudio authorizing said Defendants, and/or their licensees or assignees, to adapt the Work for *Jersey Boys*; to perform this adaptation worldwide, including in the U.K., to arrange for and promote performances therein; to broadcast excerpts from this adaptation by electronic transmissions therein; and, to otherwise deal with restricted rights in the Work therein, all in the absence of Plaintiff's express consent.

153. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts of U.K. copyright infringement, under s 96(2) CDPA 1988.

154. Plaintiff is also entitled to damages from Defendant DeVito, or an accounting of profits, for his acts of U.K. copyright infringement, under s 96(2) CDPA 1988, in amounts to be determined at trial, including additional (enhanced) damages, such as lost profits, other damages appropriate to the actual prejudice suffered by Plaintiff as a result of Defendant DeVito's infringing acts, and damages for the moral prejudice caused to Plaintiff by the infringement, under s 97(2) CDPA 1988, and Regulation 3 of the Intellectual Property (Enforcement etc.) Regulations 2006 (SI 2006/1028), due, *inter alia*, to the flagrancy of Defendant DeVito's conduct in authorizing others to use, adapt, and perform adaptations of the Work in the U.K., and the direct benefits obtained by Defendant DeVito thereby, in the form of ongoing profits, all in the absence of Plaintiff's consent, and with knowing disregard for her co-ownership of the Work.

COUNT X

[Copyright Infringement under the Laws of Canada]

(Against Defendant DeVito)

155. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 154 hereinabove, as if fully set forth in this Paragraph 155.

156. This is an action for copyright infringement under Section 27(1) of the Canadian *Copyright Act* R.S.C. 1985, c. C-42 ("the Act"), arising from, *inter alia*, Defendant DeVito's authorization of infringing acts in Canada.

157. Copyright infringement constitutes a transitory cause of action, and may be adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

158. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the

1 United States and Canada are signatories, provides that works authored by citizens of signatory states
2 must be accorded at least the same copyright protection in other signatory states as such states accord
3 works authored by their own citizens, and Canada accords such “national treatment” to U.S. authors,
4 pursuant to, *inter alia*, Section 5(1) of the Act. Thus, at the time the Work was completed, the
5 copyrights therein were protected under Canadian law, without registration or any further
6 formalities.

7 159. The Work is a work of “joint authorship” under Section 2 of the Act, in that, *inter*
8 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
9 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, which
10 could not be removed without fundamentally altering the whole; and, the parties worked together
11 with a common design or aim, and shared responsibility for the form of expression contained therein.

12 160. Whereas, the copyrights in a work vest initially with the author(s), under Section 13
13 of the Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito, as
14 joint authors, and they were co-owners thereof, with each holding an indivisible fifty (50%) percent
15 ownership interest therein.

16 161. Whereas, copyright is transmissible by testamentary disposition, pursuant to, *inter*
17 *alia*, Section 14(1) of the Act, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
18 and became co-owner of the copyrights therein, with Defendant DeVito.

19 162. Pursuant to, *inter alia*, Sections 3(1) and 27(1) of the Act, the consent of all owners
20 of a copyrighted work is required to license the work, or to exercise any of the rights of a copyright
21 owner under Section 3(1) of the Act, and one copyright co-owner may sue another co-owner for acts
22 done without his license, under Section 27(1) of the Act.

23 163. Pursuant to, *inter alia*, Sections 3(1)(a) -(i) and 27(1) and (5) of the Act, copyright
24 in a work is infringed by a person who, without license from all copyright owners does, or authorizes
25 another to: publish an unpublished work or any substantial part thereof; copy the work; convert the
26 work into a dramatic work, by way of performance in public or otherwise; reproduce, adapt and
27 publicly present the work as a cinematographic work; communicate the work to the public by
28 telecommunication; or, permit a theater or other place of entertainment to be used for the

1 performance in public of a work.

2 164. Defendant DeVito has infringed Plaintiff's copyrights in the Work, under Section
3 27(1) of the Act, by entering into an agreement with Defendants Valli and Gaudio authorizing said
4 Defendants, and/or their licensees or assignees, to copy and adapt the Work for *Jersey Boys*; to
5 perform this derivative work worldwide, including in Canada; to arrange for and promote
6 performances in theaters therein; to broadcast excerpts from this adaptation by electronic
7 transmissions therein; and, to otherwise deal with rights in the Work reserved exclusively to
8 copyright owners under Section 3(1) of the Act, all in the absence of Plaintiff's express consent.

9 165. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts
10 of copyright infringement under Canadian law, pursuant to Section 34(1) of the Act.

11 166. Plaintiff is also entitled to damages from Defendant DeVito, for his acts of Canadian
12 copyright infringement, in an amount to be determined at trial, under Sections 34(1) and 35 of the
13 Act, together with such part of Defendant DeVito's profits from such infringements as the Court
14 considers just, which were not taken into account in calculating such damages.

15 COUNT XI

16 **[Copyright Infringement under the Laws of Australia]**

17 (Against Defendant DeVito)

18 167. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 166
19 hereinabove, as if fully set forth in this Paragraph 167.

20 168. This is an action for copyright infringement under Sections 115(1), 36, and 39 of the
21 Australian *Copyright Act 1968* (Cth) ("the 1968 Act"), arising from, *inter alia*, Defendant DeVito's
22 authorization of infringing acts in Australia.

23 169. Copyright infringement constitutes a transitory cause of action, and may be
24 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

25 170. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
26 United States and Australia are signatories, provides that works authored by citizens of signatory
27 states must be accorded at least the same copyright protection in other signatory states as such states
28 accord works authored by their own citizens, and Australia accords such "national treatment" to U.S.

1 authors, pursuant to, *inter alia*, Section 184 of the 1968 Act, and Section 4, *Copyright (International*
2 *Protection) Regulations 1969*. Thus, at the time the Work was completed, the copyrights therein
3 were protected under Australian law, without registration or any further formalities.

4 171. The Work is a work of “joint authorship” under s 10(1) of the 1968 Act, in that, *inter*
5 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
6 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, and
7 invested skill and labor therein; and, the contributions of each are merged with and inseparable from
8 those of the other therein.

9 172. Whereas, the copyrights in a work vest initially with the author(s), under Section
10 35(2) of the 1968 Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant
11 DeVito, as joint authors, and they were co-owners thereof, with each holding an indivisible fifty
12 (50%) percent ownership interest therein, as a tenant-in-common.

13 173. Whereas, copyright in an unpublished work is transmissible by testamentary
14 disposition, pursuant to s 198 of the 1968 Act, Plaintiff inherited Mr. Woodard’s interest in the
15 Work upon his death, and became co-owner of the copyrights therein, with Defendant DeVito.

16 174. Pursuant to, *inter alia*, s 36 of the 1968 Act, the consent of all owners of a
17 copyrighted work is required to license the work, or to exercise any of the rights of a copyright
18 owner under s 31(1) of the 1968 Act, and one copyright co-owner may sue another co-owner for acts
19 done without his license, under Sections 36 and 39 of the 1968 Act.

20 175. Pursuant to s 36, s 39, s 31, and/or s 101 of the 1968 Act, copyright in a work is
21 infringed by a person who, without the license of all copyright owners does, or authorizes another
22 to do, any of the acts comprised in the copyright, including, *inter alia*, reproducing the work in
23 “material form” (which encompasses adaptations of the work, under Sections 10(1) and 21(2) of the
24 1968 Act); publishing the work; performing the work in public; communicating the work to the
25 public; making an adaptation of the work; doing or authorizing any of the foregoing acts in relation
26 to an adaptation of the work; and, in the case of indirect infringement, permitting a place of public
27 entertainment to be used for the public performance of a work.

28 176. *Jersey Boys* is an adaptation of the Work, under s 10(1) of the 1968 Act, as, *inter alia*,

1 it is a dramatization of the Work.

2 177. Defendant DeVito has infringed Plaintiff's copyrights in the Work, directly, and
3 indirectly, under Sections 36, 39, and/or 101 of the 1968 Act, by, *inter alia*, entering into an
4 agreement with Defendants Valli and Gaudio authorizing said Defendants, and/or their licensees or
5 assignees, to copy and adapt the Work for *Jersey Boys*; to perform this adaptation worldwide,
6 including in Australia; to arrange for and promote performances of this adaptation of the Work in
7 places of public entertainment therein; to communicate excerpts from this adaptation by electronic
8 transmissions therein; and, to otherwise deal with rights in the Work reserved exclusively to
9 copyright owners under Section 31(1) of the 1968 Act, all in the absence of Plaintiff's consent,
10 notwithstanding Defendant DeVito's full awareness of Plaintiff's co-ownership of the copyright in
11 the Work.

12 178. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts
13 of direct and indirect copyright infringement under Australian law, pursuant to, *inter alia*, Section
14 115(2) of the 1968 Act.

15 179. Plaintiff is also entitled to damages from Defendant DeVito, or an accounting of
16 profits, for his acts of Australian copyright infringement, under s 115(2) of the 1968 Act, in amounts
17 to be determined at trial, and additional (exemplary or punitive) damages, under s 115(4) of the 1968
18 Act, due, *inter alia*, to the flagrancy of Defendant DeVito's conduct in authorizing others to use,
19 adapt, and perform adaptations of the Work in Australia in utter disregard for Plaintiff's co-
20 ownership thereof; the direct benefits obtained by Defendant DeVito thereby, in the form of ongoing
21 profits; and, the need to deter similar future acts of copyright infringement thereby.

22 COUNT XII

23 **[Declarations of Invalidity, Non-Exclusivity, and/or Non-Transferability of "Exclusive** 24 **License" and Invalidity of Subsequent Licenses/Assignments]**

25 (Against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway)

26 180. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 179
27 hereinabove, as if fully set forth in this Paragraph 180.

28 181. Defendant DeVito, as a co-owner of the Work, lacked the power, authority, and/or

1 requisite ownership interest to unilaterally issue an exclusive license to Defendants Valli and Gaudio
2 thereunder, and accordingly, the “exclusive license” Defendant DeVito granted thereto, on or about
3 August 13, 1999, was *void ab initio*, under 17 U.S.C. §§ 201(a) and (d)(2), insofar as it purported
4 to cover the Work, or any of the rights, privileges, benefits, or protections accorded to an owner of
5 copyrights therein, under, *inter alia*, 17 U.S.C. §§ 106, 501(b), 502, 503, 504, and 505.

6 182. Alternatively, whereas, Defendant DeVito, as a co-owner of the Work, lacked the
7 power, authority and/or requisite ownership interest to unilaterally issue an exclusive license to
8 Defendants Valli and Gaudio thereunder, the “exclusive license” Defendant DeVito granted thereto,
9 on or about August 13, 1999, must be construed as a non-exclusive license, which Defendants Valli
10 and Gaudio could not lawfully license, sublicense, or assign, under 17 U.S.C. § 201(d)(2), in the
11 absence of Plaintiff’s express consent.

12 183. As a result of the invalidity of the aforesaid “exclusive license” from Defendant
13 DeVito, as set forth in Paragraph 181 hereof, Defendants Valli and Gaudio had, acquired, have, and
14 possess, no right, power, license, or other authority to use, reference, and/or adapt the Work; to
15 reproduce the Work or distribute copies thereof; to prepare derivative works based upon the Work;
16 to perform the Work or adaptations thereof; to authorize others to prepare derivative works based
17 upon the Work; to license, sublicense, lease, or otherwise permit third parties to use, exercise, or
18 exploit any of the copyrights in the Work; or to exercise, or authorize the exercise of, any right in
19 the Work reserved to copyright owners under 17 U.S.C. §§ 106 and 201(d).

20 184. Alternatively, as a result of the non-exclusive nature of the aforesaid “exclusive
21 license” from Defendant DeVito, as set forth in Paragraph 182 hereof, Defendants Valli and Gaudio
22 had, acquired, have, and possess, no right, power, license, or other authority to authorize others to
23 prepare derivative works based upon the Work; to license, sublicense, lease, or otherwise permit
24 third parties to use, exercise, or exploit any of the copyrights in the Work; or to authorize the
25 exercise of any other rights in the Work reserved to copyright owners under 17 U.S.C. §§ 106 and
26 201(d).

27 185. As a result of the invalidity or non-exclusivity of the aforesaid “exclusive license”
28 from Defendant DeVito to Defendants Valli and Gaudio, the subsequent purported transfer of these

1 rights by Defendants Valli and Gaudio to Defendants DSHT and/or Dodger Theatricals, in the May
2 1, 2004 agreement between these parties, and any purported license or transfer of these rights to
3 Defendants Brickman and Elice, Jersey Boys Broadway, and any other person, were void, *ab initio*,
4 with no force or effect, and conveyed no rights relating to or arising from the Work.

5 186. In this Circuit, a co-owner of a copyrighted work may assign his own exclusive rights
6 in the work, in whole or part, under 17 U.S.C. § 201(d)(1), but unless he assigns all of his rights in
7 the work, the transferee is entitled, with respect to the rights assigned, only to the “protections and
8 remedies” accorded by the Copyright Act, and not to the “rights and benefits” conferred thereby, and
9 accordingly, may not further license, sublicense, or assign those rights, under 17 U.S.C. § 201(d)(2).
10 Thus, in the alternative, under FED. R. CIV. P. 8(d)(2)-(3), Defendant DeVito’s foregoing “exclusive
11 license” to Defendants Valli and Gaudio constituted an assignment of Defendant DeVito’s entire
12 share in the exclusive rights to prepare derivative works based upon the Work in the media of, *inter*
13 *alia*, theater, film, and television, making Defendants Valli and Gaudio co-owners of said rights with
14 Plaintiff, with Plaintiff holding a fifty (50%) percent ownership interest therein, and Defendants
15 Valli and Gaudio holding a fifty (50%) percent ownership interest; but, because the assignment
16 encompassed less than Defendant DeVito’s entire share of all exclusive rights in the Work, the rights
17 acquired by Defendants Valli and Gaudio thereunder may not be further licensed, sublicensed,
18 leased, or transferred thereby, absent Plaintiff’s consent, under 17 U.S.C. § 201(d)(2). Consequently,
19 the further transfer of these rights by Defendants Valli and Gaudio to Defendants DSHT and/or
20 Dodger Theatricals, in the May 1, 2004 agreement between these parties and Defendants Brickman
21 and Elice, was void, *ab initio*, with no force or effect, and neither licensed nor conveyed any rights
22 relating to or arising from the Work. Similarly, the subsequent transfer of these rights by Defendant
23 Dodger Theatricals to Defendant Jersey Boys Broadway, was void, *ab initio*, with no force or effect,
24 and neither licensed nor conveyed any rights relating to or arising from the Work.

25 187. Plaintiff seeks a Declaratory Judgment against Defendants Valli, Gaudio, DSHT,
26 Dodger Theatricals, and Jersey Boys Broadway, pursuant to 28 U.S.C. § 2201, decreeing that: (a)
27 that the “exclusive license” encompassing the Work which Defendant DeVito granted to Defendants
28 Valli and Gaudio, on or about August 13, 1999, was void, *ab initio*, under 17 U.S.C. §§ 201(a) and

(d)(2); or, (b) was a limited, nonexclusive license, which Defendants Valli and Gaudio could not further license, lease, assign, or otherwise transfer or convey, in the absence of Plaintiff's consent, under 17 U.S.C. § 201(d)(2); (c) that all subsequent non-exclusive licenses, exclusive licenses, assignments, leases, and/or transfers of said rights by Defendants Valli and Gaudio were void and invalid under 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses and/or assignments granted by Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger Theatricals, and the subsequent transfer from Dodger Theatricals to Jersey Boys Broadway; and, (d) that Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway have no rights to use, reference, and/or adapt the Work; to reproduce the Work or distribute copies thereof; to prepare derivative works based upon the Work; to perform the Work or adaptations thereof; to license, sublicense, lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work; or to exercise, or authorize the exercise of, any other right in the Work reserved to copyright owners under 17 U.S.C. §§ 106 and 201(d).

188. Alternatively, under FED. R. CIV. P. 8(d)(2)-(3), Plaintiff seeks a Declaratory Judgment against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway, pursuant to 28 U.S.C. § 2201, decreeing that: (a) that the "exclusive license" encompassing the Work which Defendant DeVito granted to Defendants Valli and Gaudio, on or about August 13, 1999, constituted an assignment of Defendant DeVito's share in the exclusive rights to prepare derivative works based upon the Work in the media of, *inter alia*, theater, film, and television, resulting in the indivisible co-ownership of these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2); (b) that notwithstanding this "assignment," which encompassed less than all of Defendant DeVito's rights in the Work, that Defendants Valli and Gaudio were and remain prohibited from further licensing, sublicensing, leasing, or transferring the rights thereby obtained, under 17 U.S.C. § 201(d)(2); (c) that all subsequent non-exclusive licenses, exclusive licenses, assignments, leases, and/or transfers of said rights by Defendants Valli and Gaudio were and remain void and invalid under 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses and/or assignments granted by Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger Theatricals; (d) that the subsequent assignment or transfer

of said rights from Defendant Dodger Theatricals to Defendant Jersey Boys Broadway, was and remains void and invalid under 17 U.S.C. § 201(d)(2); and, (e) that Defendants DSHT, Dodger Theatricals, and Jersey Boys Broadway have no rights to use, reference, and/or adapt the Work; to reproduce the Work or distribute copies thereof; to prepare derivative works based upon the Work; to perform the Work or adaptations thereof; to authorize others to prepare derivative works based upon the Work; to license, sublicense, lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work; or to exercise, or authorize the exercise of, any right in the Work reserved to copyright owners under 17 U.S.C. §§ 106 and 201(d).

COUNT XIII

[Alternative Declaration that “Exclusive License” from Defendant DeVito to Defendants Valli and Gaudio Constituted a Transferable Assignment of Exclusive Rights]

(Against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway, in the Alternative, Under FED. R. CIV. P. 8(d)(2)-(3))

189. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 188 hereinabove, as if fully set forth in this Paragraph 189.

190. In the alternative to Counts XII, XV, XVI, and XVII hereof, under Fed. R. Civ. P. 8(d)(2)-(3), and pursuant to the allegations of Paragraphs 17(h), 20(c) and (f), 21, and 64 hereof, Defendant DeVito’s August 13, 1999 grant of exclusive rights to Defendants Valli and Gaudio effected an assignment of his entire share in the exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television, resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2), which said Defendants could further assign, under 17 U.S.C. § 201(d)(1)-(2).

191. In the alternative to Counts XII, XV, XVI, and XVII hereof, under Fed. R. Civ. P. 8(d)(2)-(3), and pursuant to the allegations of Paragraphs 17(h), 20(c) and (f), 21, 64, and 190 hereof, Defendants Valli’s and Gaudio’s May 1, 2004 transfer of the exclusive rights in the Work obtained from Defendant DeVito, to Defendants DSHT and/or Dodger Theatricals, was effective, and constituted an assignment of Valli’s and Gaudio’s entire share in the exclusive right to prepare

1 derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
2 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants DSHT
3 and/or Dodger Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d).

4 192. In the alternative to Counts XII, XV, XVI, and XVII hereof, under Fed. R. Civ. P.
5 8(d)(2)-(3), and pursuant to the allegations of Paragraphs 17(h), 20(c) and (f), 21, 64, and 190 hereof,
6 Defendant Dodger Theatricals' subsequent transfer of the exclusive rights in the Work obtained from
7 Defendants Valli, Gaudio, and/or DSHT, to Defendant Jersey Boys Broadway was effective, and
8 constituted an assignment of Dodger Theatricals' entire share in the exclusive right to prepare
9 derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
10 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendant Jersey Boys
11 Broadway (50%), under 17 U.S.C. §§ 201(a) and (d).

12 193. Plaintiff seeks a Declaratory Judgment against Defendants Valli, Gaudio, DSHT,
13 Dodger Theatricals, and Jersey Boys Broadway, pursuant to 28 U.S.C. § 2201, decreeing: (a) that
14 the "exclusive license" encompassing the Work which Defendant DeVito granted to Defendants
15 Valli and Gaudio, on or about August 13, 1999, effected an assignment of his entire share in the
16 exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater,
17 film, and television, resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and
18 Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2); and, (b) that Defendants
19 Valli's and Gaudio's May 1, 2004 transfer of the exclusive rights in the Work obtained from
20 Defendant DeVito as aforesaid, to Defendants DSHT and/or Dodger Theatricals, constituted an
21 assignment of Valli's and Gaudio's entire share in the exclusive right to prepare derivative works
22 based upon the Work, in the fields of, *inter alia*, theater, film, and television, resulting in an
23 indivisible co-ownership of these rights by Plaintiff (50%) and Defendants DSHT and/or Dodger
24 Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d); and, (c) that Defendant Dodger Theatricals'
25 subsequent transfer of the exclusive rights in the Work obtained from Defendants Valli, Gaudio,
26 and/or DSHT, to Defendant Jersey Boys Broadway was effective, and constituted an assignment of
27 Dodger Theatricals' entire share in the exclusive right to prepare derivative works based upon the
28 Work, in the fields of, *inter alia*, theater, film, and television, resulting in an indivisible co-

ownership of these rights by Plaintiff (50%) and Defendant Jersey Boys Broadway (50%), under 17 U.S.C. §§ 201(a) and (d).

COUNT XIV

[Equitable Accounting]

(Against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway,
in the Alternative, Under FED. R. CIV. P. 8(d)(2)-(3))

194. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 193 hereinabove, as if fully set forth in this Paragraph 194.

195. Co-owners of a copyrighted work are akin to tenants-in-common, with each co-owner having an undivided, independent right to use the work, subject to a duty to account for profits to the other co-owner(s).

196. As a result of Defendant DeVito's transfer of his entire share of certain of his exclusive rights in the Work to Defendants Valli and Gaudio, under the "exclusive license" executed on or about August 13, 1999, Defendants Valli and Gaudio became co-owners of these rights with Plaintiff, under 17 U.S.C. §§ 201(a) and (d), with Defendants Valli and Gaudio holding an indivisible fifty (50%) percent ownership interest therein, and Plaintiff holding the remaining fifty (50%) percent ownership interest therein.

197. As a result of Defendants Valli's and Gaudio's May 1, 2004 transfer of certain of the exclusive rights in the Work obtained from Defendant DeVito as aforesaid, to Defendants DSHT and/or Dodger Theatricals – namely, all live stage musical rights in and to the Work as used, referenced, and/or adapted for *Jersey Boys*, Defendants DSHT and/or Dodger Theatricals became co-owners of these rights with Plaintiff, under 17 U.S.C. §§ 201(a) and (d), with Defendants DSHT and/or Dodger Theatricals holding an indivisible fifty (50%) percent ownership share therein, and Plaintiff holding the remaining indivisible fifty (50%) percent ownership interest therein.

198. As a result of Defendant Dodger Theatricals' subsequent transfer of the exclusive rights in the Work obtained from Defendants Valli and Gaudio and/or DSHT as aforesaid, to Defendant Jersey Boys Broadway, Defendant Jersey Boys Broadway became a co-owner of these rights with Plaintiff, under 17 U.S.C. §§ 201(a) and (d), with Defendant Jersey Boys Broadway

1 holding an indivisible fifty (50%) percent ownership share therein, and Plaintiff holding the
2 remaining indivisible fifty (50%) percent ownership interest therein.

3 199. As co-owner of the aforesaid rights in the Work transferred to Defendants Valli and
4 Gaudio, Plaintiff has a right to an accounting from Defendants Valli and Gaudio, of any and all
5 profits obtained as a result of their exercise of said rights, and the use and benefit of the Work, and
6 to payment of her fifty (50%) percent *pro rata* share of same.

7 200. As co-owner of the aforesaid rights in the Work transferred by Defendants Valli and
8 Gaudio to Defendants DSHT and/or Dodger Theatricals, Plaintiff has a right to an accounting from
9 Defendants DSHT and/or Dodger Theatricals, of any and all profits obtained as a result of their
10 exercise of said rights, and the use and benefit of the Work, and to payment of her fifty (50%)
11 percent *pro rata* share of same.

12 201. As co-owner of the aforesaid rights in the Work transferred by Defendant Dodger
13 Theatricals to Defendant Jersey Boys Broadway, Plaintiff has a right to an accounting from
14 Defendant Jersey Boys Broadway, of any and all profits obtained as a result of its exercise of said
15 rights, and the use and benefit of the Work, and to payment of her fifty (50%) percent *pro rata* share
16 of same.

17 202. The duties of Defendants Valli and Gaudio, Defendants DSHT and/or Dodger
18 Theatricals, and Defendant Jersey Boys Broadway to account to Plaintiff, as aforesaid, includes, but
19 is not limited to, a duty to account for profits obtained, derived, or resulting from: (a) the use and/or
20 adaptation of the Work for *Jersey Boys* and collateral products by same; and, (b) the use and/or
21 adaptation of the Work by any other person or entity acting under a license, sublicense, lease and/or
22 transfer of rights under the Work issued formally or informally by said Defendants thereto.

23 203. Plaintiff has demanded that Defendants Valli and Gaudio, DSHT and Dodger
24 Theatricals, and Jersey Boys Broadway, account for profits arising directly or indirectly from their
25 use, exploitation, and/or exercise of rights assigned by Defendant DeVito or his successors relating
26 to the Work, but said Defendants have failed and refused, and continue to fail and refuse, to render
27 accountings or pay Plaintiff her share of said profits.

28 204. The precise nature and extent of Defendant Valli's, Gaudio's, DSHT's, Dodger

1 Theatricals', and Jersey Boys Broadway's income attributable to the rights originally conveyed by
2 Defendant DeVito, and/or attributable to the use and benefit of the Work, are unknown to Plaintiff
3 at the present time, and said profits cannot be determined without an accounting of said Defendants'
4 transactions relating to *Jersey Boys*, the *Jersey Boys Book*, the *Jersey Boys Cast Recording*, which
5 includes portions of the *libretto*, and the motion picture version of *Jersey Boys* which is planned.
6 Moreover, the facts and accounts presented are so complex that investigations concerning said
7 Defendants' accounts are necessary to effect justice between the parties, and establish the value of
8 Plaintiff's interests.

9 205. Plaintiff seeks an Order from this Court that Defendants Valli, Gaudio, DSHT,
10 Dodger Theatricals, and Jersey Boys Broadway render accountings to Plaintiff of the amounts owed,
11 as well as a Judgment against said Defendants, for sums to be determined in the accounting, with
12 prejudgment and post-judgment interest, as allowed by law.

13 COUNT XV

14 **[Copyright Infringement]**

15 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals,
16 Jersey Boys Broadway, JB Viva Vegas, and Jersey Boys Records)

17 206. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 205
18 hereinabove, as if fully set forth in this Paragraph 206.

19 207. The Work contains large amounts of material that is wholly original to Mr. Woodard
20 and Defendant DeVito, and constitutes copyrightable subject matter under the laws of the United
21 States. As co-author of the joint Work, Mr. Woodard held an indivisible fifty (50%) percent share
22 therein, including an equal share in any material which may have originated from Defendant DeVito,
23 and Mr. Woodard's entire ownership interest passed to Plaintiff upon his death.

24 208. U.S. Copyright Reg. No. Txu 454 118 for the Work, dated January 11, 1991, and
25 shown in *Exhibit 21* hereof, has been and is being held by Defendant DeVito in constructive trust
26 for Plaintiff, as co-owner, and Plaintiff is entitled to the rights, benefits, protections, and remedies
27 accorded by the Copyright Act thereunder. Said registration issued years before the infringing
28 conduct complained of herein, and the prerequisites and formalities of 17 U.S.C. § 411 have been

1 satisfied. Whereas, Plaintiff is a legal and/or beneficial owner of the copyrights embodied in U.S.
2 Reg. No. Txu 454 118, she has standing to bring this action for copyright infringement against the
3 above-named Defendants under 17 U.S.C. § 501(b).

4 209. Plaintiff also has standing to bring this action for copyright infringement against the
5 above-named Defendants under 17 U.S.C. § 411(a)-(b), by virtue of *Supplementary Registration* No.
6 Txu1 372 636, issued on July 3, 2007, and shown in *Exhibit 26B* hereof, which supplements U.S.
7 Reg. No. Txu 454 118 to include Mr. Woodard's claims of authorship and ownership.

8 210. *Jersey Boys* is a derivative work based upon the Work, under 17 U.S.C. § 101, as it
9 is a dramatization, fictionalization, abridgment, condensation, or other recasting, transformation, or
10 adaptation of the Work, and the various drafts, treatments, and outlines for *Jersey Boys* which
11 preceded the finalized versions of the script, exhibit extensive intermediate copying.

12 211. Each of the above-named Defendants, and/or their principals, had extensive access
13 to the Work, over a period spanning at least several years, and, pursuant to the inverse ratio rule in
14 this Circuit, less similarity between the Work and *Jersey Boys* is required to establish "copying" than
15 would be required if said Defendants had less access to the Work.

16 212. *Jersey Boys* is substantially similar to the Work, extrinsically and intrinsically.

17 213. *Jersey Boys* includes passages copied *verbatim* from the Work, and passages closely
18 paraphrased from the Work, and the selection, sequencing, and ordering of the events portrayed in
19 *Jersey Boys* were appropriated from the Work.

20 214. Plaintiff has not authorized any of the above-named Defendants to prepare derivative
21 works based upon the Work; to otherwise appropriate material from the Work for any purpose, or
22 authorize others to do so; to reproduce the Work; to perform the Work, or to distribute copies
23 thereof.

24 215. The "exclusive license" granted by Defendant DeVito to Defendants Valli and
25 Gaudio, on or about August 13, 1999, was invalid under 17 U.S.C. § 201(a) and (d)(2), as set forth
26 hereinabove, and conveyed no rights to Defendants Valli and Gaudio, or constituted only a non-
27 exclusive license, with no rights to further transfer, lease, license, or sublicense same.

28 216. Alternatively, the "exclusive license" granted by Defendant DeVito to Defendants

1 Valli and Gaudio constituted an assignment of certain of Defendant DeVito's exclusive rights in the
2 Work, under 17 U.S.C. § 201(d)(1), but did not permit the further licensing, sublicensing, leasing
3 and/or transfer of said rights by Defendants Valli and Gaudio to any third party, under 17 U.S.C. §
4 201(d)(2).

5 217. Defendants Valli and Gaudio have infringed Plaintiff's copyrights in the Work, under
6 17 U.S.C. § 501(a), by their exercise of exclusive rights in the Work which are reserved to copyright
7 owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito, as co-
8 owners thereof, namely: (a) the authorization of others, including Defendants Brickman, Elice,
9 McAnuff, DSHT, and Dodger Theatricals, to prepare derivative works based upon the Work,
10 including, but not limited to, the *Jersey Boys libretto* and production, the *Jersey Boys Cast*
11 *Recording*, and the *Jersey Boys Book*, in violation of Plaintiff's rights under 17 U.S.C. § 106(2); (b)
12 the authorization of others, including Defendants Brickman, Elice, and McAnuff, to reproduce and
13 distribute copies of the Work, in violation of Plaintiff's rights under 17 U.S.C. §§ 106(1) and 106(3);
14 and, (c) the authorization of others, including Defendants DSHT and Dodger Theatricals, to perform
15 portions of the Work, and/or derivative works based thereon, in violation of Plaintiff's rights under
16 17 U.S.C. § 106(4), and said Defendants are jointly and severally liable for these infringements.

17 218. Defendants Brickman and Elice have infringed Plaintiff's copyrights in the Work,
18 under 17 U.S.C. § 501(a), by, *inter alia*: (a) their preparation of derivative works based upon the
19 Work, namely, various versions of the *Jersey Boys libretto*, in violation of Plaintiff's rights under
20 17 U.S.C. § 106(2); (b) their copying from the Work for said *libretto*, including intermediate copying
21 in drafts, outlines, and treatments therefor, in violation of Plaintiff's rights under 17 U.S.C. §§
22 106(1); (c) their reproduction and distribution of copies of the Work, in violation of Plaintiff's rights
23 under 17 U.S.C. §§ 106(1) and 106(3); and, (d) their authorization of others to use their infringing
24 material in, *inter alia*, the *Jersey Boys Cast Recording* and *Jersey Boys Book*, in violation of
25 Plaintiff's rights under 17 U.S.C. 106(2), and said Defendants are jointly and severally liable for
26 these infringements.

27 219. Defendant McAnuff has infringed Plaintiff's copyrights in the Work, under 17 U.S.C.
28 § 501(a) by, *inter alia*: (a) his copying from the Work and preparation of derivative works based

1 upon it, in concert with Defendants Brickman and Elice and in violation of Plaintiff's rights, under
2 17 U.S.C. § 106(1) and (2), and (b) his reproduction and/or distribution of copies of the Work, in
3 violation of Plaintiff's rights under 17 U.S.C. §§ 106(1) and/or 106(3).

4 220. Defendant DSHT has infringed Plaintiff's copyrights in the Work, under 17 U.S.C.
5 § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to copyright owners
6 under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito as co-owners
7 thereof, namely: (a) the authorization of others, including Defendants Brickman, Elice, McAnuff,
8 and Dodger Theatricals, to prepare derivative works based upon the Work, including, but not limited
9 to, the *Jersey Boys libretto* and production, the *Jersey Boys Cast Recording*, and the *Jersey Boys*
10 *Book*, in violation of Plaintiff's rights under 17 U.S.C. § 106(2); (b) the authorization of others,
11 including Defendants Brickman, Elice, and McAnuff, to reproduce and distribute copies of the
12 Work, in violation of Plaintiff's rights under 17 U.S.C. §§ 106(1) and 106(3); and, (c) the
13 performance of, and/or authorization of others, including Defendants Dodger Theatricals, to produce
14 and perform, portions of the Work, and derivative works based thereon, in violation of Plaintiff's
15 rights under 17 U.S.C. § 106(4).

16 221. Defendant Dodger Theatricals has infringed Plaintiff's copyrights in the Work, under
17 17 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to
18 copyright owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant
19 DeVito, as co-owners, namely: (a) the authorization of others, including Defendants Brickman,
20 Elice, and McAnuff, to copy from, and prepare derivative works based upon the Work, including,
21 but not limited to, the various versions of the *Jersey Boys libretto* and production, the *Jersey Boys*
22 *Cast Recording*, and the *Jersey Boys Book*, in violation of Plaintiff's rights under 17 U.S.C. § 106(1)
23 and (2); (b) the authorization of others, including Defendants Brickman, Elice, and McAnuff, to
24 reproduce and distribute copies of the Work, in violation of Plaintiff's rights under 17 U.S.C. §§
25 106(1) and 106(3); (c) the performance of, and/or authorization of others, to produce and perform,
26 portions of the Work, and derivative works based thereon, in violation of Plaintiff's rights under 17
27 U.S.C. § 106(4); and, (d) the assignment of rights, to Defendant Jersey Boys Broadway, to engage
28 in each of the foregoing unlawful activities, without authority to do so, in violation of, *inter alia*, 17

1 U.S.C. §§ 106(1)-(4) and 201.

2 222. Defendant Jersey Boys Broadway has infringed Plaintiff's copyrights in the Work,
3 under 17 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to
4 copyright owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant
5 DeVito, as co-owners, namely: (a) the authorization of others, including Defendants Brickman,
6 Elice, and McAnuff, to copy from, and prepare derivative works based upon the Work, including,
7 but not limited to, various versions of the *Jersey Boys libretto* and production, the *Jersey Boys Cast*
8 *Recording*, and the *Jersey Boys Book*, in violation of Plaintiff's rights under 17 U.S.C. § 106(1) and
9 (2); (b) the authorization of others, including Defendants Brickman, Elice, and McAnuff, to
10 reproduce and distribute copies of the Work, in violation of Plaintiff's rights under 17 U.S.C. §§
11 106(1) and 106(3); and, (c) the performance of, and/or authorization of others, including Defendant
12 JB Viva Vegas, to produce and perform, portions of the Work, and derivative works based thereon,
13 in violation of Plaintiff's rights under 17 U.S.C. § 106(4).

14 223. Defendant JB Viva Vegas has infringed Plaintiff's copyrights in the Work, under 17
15 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to copyright
16 owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito as co-
17 owners, namely, the production and performance of, and/or authorization of others to perform
18 publicly, portions of the Work, and a derivative work based thereon, in violation of Plaintiff's rights
19 under 17 U.S.C. § 106(4).

20 224. Defendant Jersey Boys Records has infringed Plaintiff's copyrights in the Work,
21 under 17 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to
22 copyright owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant
23 DeVito as co-owners, namely, the authorization of others to include material copied or adapted from
24 the Work in violation of 17 U.S.C. §§ 106(1)-(2), for the *Jersey Boys Cast Recording*.

25 225. Defendants' foregoing unlawful activities were willful, and committed with the intent
26 to commercially exploit the Work, in which they have no legal or proprietary rights.

27 226. If Defendants' foregoing activities continue, Plaintiff will suffer irreparable harm of
28 a continuing nature for which there is no plain, speedy or adequate remedy at law, and Defendants'

1 acts of copyright infringement will continue unless they are enjoined from further committing such
2 wrongful acts.

3 227. By reason of the foregoing willful infringements of copyright, Plaintiff has sustained
4 injury, loss, and damage to her ownership rights, and Defendants have unlawfully, unfairly and
5 wrongfully derived, and will continue to derive, income from these infringing acts, and are being
6 unjustly enriched by these infringements.

7 228. Plaintiff has been damaged by said Defendants' acts in an amount not yet ascertained
8 but to be proven at trial.

9 229. Defendants' aforesaid infringing acts have been performed with knowledge of
10 Plaintiff's copyrights and were performed intentionally and willfully.

11 230. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, Brickman,
12 Elice, McAnuff, DSHT, Dodger Theatricals, Jersey Boys Broadway, JB Viva Vegas, and Jersey
13 Boys Records, for their acts of infringement, as provided in 17 U.S.C. § 502; namely to preliminary
14 and permanent injunctions preventing Defendants, their officers, partners, agents, servants,
15 employees, and attorneys, and all those acting in concert or participation therewith, from directly or
16 indirectly copying and distributing the Work; preparing derivative works based upon or adapted from
17 the Work; performing the Work, in whole or in part, performing derivative works based upon the
18 Work, and/or authorizing third parties to engage in such activities.

19 231. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, Brickman,
20 Elice, McAnuff, DSHT, Dodger Theatricals, Jersey Boys Broadway, JB Viva Vegas, and Jersey
21 Boys Records, Plaintiff's actual damages and any additional profits of these infringers, under 17
22 U.S.C. § 504(b); to statutory damages in lieu of actual damages, under 17 U.S.C. § 504(c); to
23 enhanced damages for Defendants' willful infringements, under 17 U.S.C. § 504(d); and, to
24 Plaintiff's attorney fees and the costs of this action, under 17 U.S.C. § 505. Plaintiff also is entitled
25 to an Order allowing for the impoundment and destruction of any and all infringing articles, under
26 17 U.S.C. § 503.

27 **COUNT XVI**

28 **[Vicarious Copyright Infringement]**

(Against Defendants Valli, Gaudio, McAnuff, David, DSHT, Dodger Theatricals,
Jersey Boys Broadway, Jersey Boys Records, Skunk, and Getting Home)

232. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 231 hereinabove, as if fully set forth in this Paragraph 232.

233. Defendants Valli, Gaudio, McAnuff, David, DSHT, Dodger Theatricals, Jersey Boys Broadway, Jersey Boys Records, Skunk, and Getting Home, each had the right and ability to control the acts of other infringers herein, and received direct financial benefit from the infringements, as shown, *inter alia*, in the documents included in *Exhibit 31* hereof. Accordingly, said Defendants are liable to Plaintiff for vicarious copyright infringement.

234. As a direct and proximate result of said Defendants' vicarious copyright infringement, Plaintiff has suffered, and will continue to suffer, monetary damage and irreparable harm.

235. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, McAnuff, David, DSHT, Dodger Theatricals, Jersey Boys Broadway, Jersey Boys Records, Skunk, and Getting Home, for their vicarious copyright infringements as provided in 17 U.S.C. § 502, namely, to preliminary and permanent injunctions preventing said Defendants, their officers, agents, servants, employees, attorneys, and all those acting in concert or participation therewith, from directly or indirectly copying and distributing the Work; preparing derivative works based upon or adapted from the Work; performing the Work, in whole or in part; performing derivative works based upon the Work, and/or authorizing third parties to engage in such activities.

236. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, McAnuff, David, DSHT, Dodger Theatricals, Jersey Boys Broadway, Jersey Boys Records, Skunk, and Getting Home, Plaintiff's actual damages, plus any profits resulting from the infringements, under 17 U.S.C. § 504(b); statutory damages in lieu of actual damages, if Plaintiff so elects, under 17 U.S.C. § 504(c); and, to Plaintiff's attorneys' fees and the costs of this action under 17 U.S.C. § 505. Finally, Plaintiff is entitled to an Order allowing for the impoundment and destruction of any and all infringing articles under 17 U.S.C. § 503.

COUNT XVII

[Contributory Copyright Infringement]

(Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT,
Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys Records)

237. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 236 hereinabove, as if fully set forth in this Paragraph 237.

238. Defendants Valli, Gaudio, Brickman, Elice, and McAnuff were aware, and/or should reasonably have been aware, that Defendant DeVito, whom they well know, was not the sole author of the Work, or the sole owner of the copyrights therein, and upon information and belief, said Defendants were also aware of Mr. Woodard's primary authorship of the Work.

239. Defendant David, the dominant principal of Defendant Dodger Theatricals, which is the general partner of Defendants Jersey Boys Broadway and Jersey Boys Records, and an officer and director of DSHT, when the contracts for the La Jolla, California production of *Jersey Boys* were signed, was also aware that Defendant DeVito was not the sole author of the Work; was aware, or should reasonably have been aware, that Defendant DeVito was not the sole owner of the copyrights therein; and upon information and belief, was aware of Mr. Woodard's primary authorship of the Work.

240. Notwithstanding the above-named Defendants' knowledge of the infringing activities complained of herein, each induced, caused, or materially contributed to the infringing conduct of others, and are therefore liable to Plaintiff as contributory copyright infringers. Defendants Valli and Gaudio, through their unlawful "authorizations," licenses, and/or assignments, contributed to the infringements of Defendants Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals, and their sublicensees and/or transferees. Defendants Brickman and Elice, through their drafting of the infringing *Jersey Boys libretto* and intermediate copying from the Work for the drafts and/or treatments which secured a director and producers, materially contributed to, and/or induced, acts of infringement by Defendants Valli, Gaudio, McAnuff, DSHT, Dodger Theatricals, Jersey Boys Broadway, Jersey Boys Records, JB Viva Vegas, and third parties, including the publishers of the *Jersey Boys Book*, and those involved with the *Jersey Boys Cast Recording*. Defendant McAnuff induced, caused, and/or materially contributed to the infringing acts of Defendants Brickman and Elice, and thereby the remaining Defendants, by encouraging their intermediate copying, and the

1 transformation of the original *libretto* for *Jersey Boys* into one that was adapted even more heavily
2 from the Work. Defendant David, the driving force behind Defendants Dodger Theatricals, DSHT
3 (during periods relevant hereto), Jersey Boys Broadway, Jersey Boys Records, and JB Viva Vegas,
4 caused, induced, and/or materially contributed to the acts of infringement by these Defendants, and
5 others, by, *inter alia*, organizing these companies for the purpose of engaging in infringing activities.
6 And, Defendants DSHT, Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys Records,
7 caused, induced, and/or materially-contributed to the infringements of Defendants Brickman, Elice,
8 McAnuff, and others, including third parties, by, *inter alia*, launching productions of *Jersey Boys*
9 throughout the U.S., and abroad, and authorizing and distributing the infringing *Jersey Boys Cast*
10 *Recording*.

11 241. Defendants' foregoing activities were willful, and committed with the intent to
12 commercially exploit the Work, in which they have no legal or proprietary rights.

13 242. If Defendants' foregoing activities continue, Plaintiff will suffer irreparable harm of
14 a continuing nature for which there is no plain, speedy or adequate remedy at law, and Defendants'
15 acts of copyright infringement will continue unless they are enjoined from further committing such
16 wrongful acts.

17 243. By reason of the foregoing willful acts of contributory infringement, Plaintiff has
18 sustained injury, loss, and damage to her ownership rights, and Defendants have unlawfully, unfairly
19 and wrongfully derived, and will continue to derive, income from these infringing acts, and are being
20 unjustly enriched thereby.

21 244. Plaintiff has been damaged by said Defendants' acts in an amount not yet ascertained
22 but to be proven at trial.

23 245. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, Brickman,
24 Elice, McAnuff, David, DSHT, Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys
25 Records, for their acts of contributory infringement, as provided in 17 U.S.C. § 502; namely to
26 preliminary and permanent injunctions preventing said Defendants, their officers, agents, servants,
27 employees, and attorneys, and all those acting in concert or participation therewith, from directly or
28 indirectly copying and distributing the Work; preparing derivative works based upon or adapted from

the Work; performing the Work, in whole or part, or performing derivative works based upon the Work; and/or authorizing third parties to engage in such activities.

246. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger Theatricals, Jersey Boys Broadway, and Jersey Boys Records, Plaintiff's actual damages and any profits resulting from the infringements, under 17 U.S.C. § 504(b); statutory damages in lieu of actual damages, under 17 U.S.C. § 504(c); enhanced damages for the willfulness of said Defendants' infringements, under 17 U.S.C. § 504(d); and, Plaintiff's attorneys' fees and the costs of this action, under 17 U.S.C. § 505. Finally, Plaintiff is entitled to an Order allowing for the impoundment and destruction of any and all infringing articles, under 17 U.S.C. § 503.

COUNT XVIII

[Copyright Infringement under the Laws of the United Kingdom]

(Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff,
DSHT, Dodger Theatricals, and Jersey Boys Broadway)

247. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 246 hereinabove, as if fully set forth in this Paragraph 247.

248. This is an action for copyright infringement under s 16(2) of the U.K. *Copyright, Designs and Patents Act 1988*, as amended ("CDPA 1988"), arising from, *inter alia*, the authorization and/or execution by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and/or Jersey Boys Broadway of infringing acts in the United Kingdom.

249. Copyright infringement constitutes a transitory cause of action, and may be adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

250. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the United States and the United Kingdom are signatories, provides that works authored by citizens of signatory states must be accorded at least the same copyright protection in other signatory states as such states accord works authored by their own citizens, and the United Kingdom accords such "national treatment" to U.S. authors, pursuant to, *inter alia*, Section 154(2) CDPA 1988, and Statutory Instrument 1989, No. 157, *The Copyright (International Conventions)(Amendment) Order*

1 1989. Thus, at the time the Work was completed, the copyrights therein were protected under U.K.
2 law, without registration or any further formalities.

3 251. The Work is a work of “joint authorship” under s 10 (1) CDPA 1988, in that, *inter*
4 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
5 Woodard and Defendant DeVito made integral contributions thereto, which could not be removed
6 without fundamentally altering the whole; and, the parties worked together with a common design
7 or aim, and shared responsibility for the form of expression contained therein.

8 252. Whereas, the copyrights in a work vest initially with the author(s), under s 11(1)
9 CDPA 1988, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito,
10 as joint authors, and they were co-owners thereof, each having an indivisible fifty (50%) percent
11 interest therein.

12 253. Whereas, copyright is transmissible by testamentary disposition or operation of law,
13 under s 90(1) CDPA 1988, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
14 and became co-owner of all copyrights therein with Defendant DeVito.

15 254. Section 173(2) CDPA 1988 provides that the consent of all owners of a copyrighted
16 work is required to license a work, or otherwise authorize any of the acts restricted to copyright
17 owners therein.

18 255. Pursuant to s 16(2) and s 173(2) CDPA 1988, copyright in a work is infringed by a
19 person who, without the license of all copyright owners does, or authorizes another to do, directly,
20 or indirectly, any of the acts restricted by the copyright, including, *inter alia*, copying the work;
21 issuing copies to the public in the European Economic Area (EEA) for the first time; communicating
22 the work to the public by electronic transmission; performing the work in public; renting or lending
23 the work to the public; and, making an adaptation of the work, as set forth in s 16(1) CDPA 1988,
24 and, pursuant to s 21(2) CDPA 1988, doing any of these acts in relation to an adaptation is also a
25 restricted act.

26 256. *Jersey Boys* is an adaptation of the Work, under s 21(3) CDPA 1988, as it is a
27 conversion of the Work into a dramatic work.

28 257. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals,

1 and Jersey Boys Broadway have infringed Plaintiff's copyrights in the Work, under s 16(2) CDPA
 2 1988, by entering into agreements among themselves and others, authorizing themselves and others
 3 to copy from and adapt the Work for *Jersey Boys*; copying and adapting the Work for *Jersey Boys*;
 4 staging and performing this adaptation worldwide, including in the United Kingdom, and arranging
 5 for and promoting performances in public theaters and/or other entertainment establishments therein;
 6 broadcasting excerpts from said adaptation by electronic transmissions therein; and, otherwise
 7 dealing with restricted rights in the Work therein, all in the absence of Plaintiff's consent.

8 258. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
 9 Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, for their acts
 10 of U.K. copyright infringement, under s 96(2) CDPA 1988.

11 259. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
 12 McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, or an accounting of profits
 13 therefrom, for their acts of U.K. copyright infringement, under s 96(2) CDPA 1988, in amounts to
 14 be determined at trial, including additional (enhanced) damages, such as lost profits, other damages
 15 appropriate to the actual prejudice suffered by Plaintiff as a result of said Defendants' infringing acts,
 16 and damages for the moral prejudice caused to Plaintiff by their infringements, under s 97(2) CDPA
 17 1988, and Regulation 3 of the Intellectual Property (Enforcement etc.) Regulations 2006 (SI
 18 2006/1028), due, *inter alia*, to the flagrancy of their conduct in adapting, performing, and
 19 authorizing others to use, adapt, and perform adaptations of the Work in the U.K., and due to the
 20 direct benefits obtained by said Defendants thereby, in the form of ongoing profits, in the absence
 21 of Plaintiff's consent, and with knowing disregard for her co-ownership of the Work.

22 COUNT XIX

23 **[Copyright Infringement under the Laws of Canada]**

24 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT,
 25 Dodger Theatricals, and Jersey Boys Broadway)

26 260. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 259
 27 hereinabove, as if fully set forth in this Paragraph 260.

28 261. This is an action for copyright infringement under Section 27(1) of the Canadian

1 *Copyright Act* R.S.C. 1985, c. C-42 ("the Act"), arising from, *inter alia*, the authorization and/or
2 execution. by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals
3 and/or Jersey Boys Broadway, of infringing acts in Canada.

4 262. Copyright infringement constitutes a transitory cause of action, and may be
5 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

6 263. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
7 United States and Canada are signatories, provides that works authored by citizens of signatory states
8 must be accorded at least the same copyright protection in other signatory states as such states accord
9 works authored by their own citizens, and Canada accords such "national treatment" to U.S. authors,
10 pursuant to, *inter alia*, Section 5(1) of the Act. Thus, at the time the Work was completed, the
11 copyrights therein were protected under Canadian law, without registration or any further
12 formalities.

13 264. The Work is a work of "joint authorship" under Section 2 of the Act, in that, *inter*
14 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
15 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, which
16 could not be removed without fundamentally altering the whole; and, the parties worked together
17 with a common design or aim, and shared responsibility for the form of expression contained therein.

18 265. Whereas, the copyrights in a work vest initially with the author(s), under Section 13
19 of the Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito, as
20 joint authors, and they were co-owners thereof, with each holding an indivisible fifty (50%) percent
21 ownership interest therein.

22 266. Whereas, copyright is transmissible by testamentary disposition, pursuant to, *inter*
23 *alia*, Section 14(1) of the Act, Plaintiff inherited Mr. Woodard's interest in the Work upon his death,
24 and became co-owner of the copyrights therein, with Defendant DeVito.

25 267. Pursuant to, *inter alia*, Sections 3(1) and 27(1) of the Act, the consent of all owners
26 of a copyrighted work is required to license the work, or to exercise any of the rights of a copyright
27 owner under Section 3(1) of the Act, and one copyright co-owner may sue any person, including his
28 co-owner, and a purported licensee thereof, for acts done without his license, under Section 27(1)

1 of the Act.

2 268. Pursuant to, *inter alia*, Sections 3(1)(a) -(I) and 27(1) and (5) of the Act, copyright
3 in a work is infringed by a person who, without license from all copyright owners does, or authorizes
4 another to: publish an unpublished work or any substantial part thereof; copy the work; convert the
5 work into a dramatic work, by way of performance in public or otherwise; reproduce, adapt and
6 publicly present the work as a cinematographic work; communicate the work to the public by
7 telecommunication; or, permit a theater or other place of entertainment to be used for the
8 performance in public of a work.

9 269. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals,
10 and Jersey Boys Broadway, have infringed Plaintiff's copyrights in the Work, under Section 27(1)
11 of the Act, by, *inter alia*, entering into agreements among themselves and with others, authorizing
12 themselves and/or others to copy from and adapt the Work for *Jersey Boys*; to stage and perform this
13 derivative work worldwide, including in Canada; to arrange for and promote performances of this
14 adaptation in theaters in Canada; to broadcast excerpts from this adaptation by electronic
15 transmissions therein; and, to otherwise deal with rights in the Work reserved exclusively to
16 copyright owners under Section 3(1) of the Act, all in the absence of Plaintiff's consent.

17 270. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
18 Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, for their acts
19 of copyright infringement under Canadian law, pursuant to Section 34(1) of the Act.

20 271. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
21 McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, for their acts of Canadian
22 copyright infringement, in an amount to be determined at trial, under Sections 34(1) and 35 of the
23 Act, together with such part of said Defendants' profits from such infringements as the Court
24 considers just, which were not taken into account in calculating such damages.

25 **COUNT XX**

26 **[Copyright Infringement under the Laws of Australia]**

27 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT,

28 Dodger Theatricals, and Jersey Boys Broadway)

1 272. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 271
2 hereinabove, as if fully set forth in this Paragraph 272.

3 273. This is an action for copyright infringement under Sections 115(1), 36, and 39 of the
4 Australian *Copyright Act 1968 (Cth)* (“the 1968 Act”), arising from, *inter alia*, the authorization
5 and/or execution. by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger
6 Theatricals, and/or Jersey Boys Broadway, of infringing acts in Australia.

7 274. Copyright infringement constitutes a transitory cause of action, and may be
8 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

9 275. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
10 United States and Australia are signatories, provides that works authored by citizens of signatory
11 states must be accorded at least the same copyright protection in other signatory states as such states
12 accord works authored by their own citizens, and Australia accords such “national treatment” to U.S.
13 authors, pursuant to, *inter alia*, Section 184 of the 1968 Act, and Section 4, *Copyright (International
14 Protection) Regulations 1969*. Thus, at the time the Work was completed, the copyrights therein
15 were protected under Australian law, without registration or any further formalities.

16 276. The Work is a work of “joint authorship” under s 10(1) of the 1968 Act, in that, *inter
17 alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
18 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, and
19 invested skill and labor therein; and, the contributions of each are merged with and inseparable from
20 those of the other therein.

21 277. Whereas, the copyrights in a work vest initially with the author(s), under Section
22 35(2) of the 1968 Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant
23 DeVito, as joint authors, and they were co-owners thereof, with each holding an indivisible fifty
24 (50%) percent ownership interest therein, as a tenant-in-common.

25 278. Whereas, copyright in an unpublished work is transmissible by testamentary
26 disposition, pursuant to s 198 of the 1968 Act, Plaintiff inherited Mr. Woodard’s interest in the
27 Work upon his death, and became co-owner of the copyrights therein, with Defendant DeVito.

28 279. Pursuant to, *inter alia*, s 36 of the 1968 Act, the consent of all owners of a

1 copyrighted work is required to license the work, or to exercise any of the rights of a copyright
2 owner under s 31(1) of the 1968 Act, and Plaintiff has not provided her consent to the use or exercise
3 of any rights in the Work in Australia by Defendants Valli, Gaudio, Brickman, Elice, McAnuff,
4 DSHT, or Dodger Theatricals, or any purported lessee, licensee, sublicensee, or assignee thereof.

5 280. Pursuant to s 36 , s 39, s 31, and/or s 101 of the 1968 Act, copyright in a work is
6 infringed by a person who, without the license of all copyright owners does, or authorizes another
7 to do, any of the acts comprised in the copyright, including, *inter alia*, reproducing the work in
8 “material form” (which encompasses adaptations of the work, under Sections 10(1) and 21(2) of the
9 1968 Act); publishing the work; performing the work in public; communicating the work to the
10 public; making an adaptation of the work; doing or authorizing any of the foregoing acts in relation
11 to an adaptation of the work; and, in the case of indirect infringement, permitting a place of public
12 entertainment to be used for the public performance of a work.

13 281. *Jersey Boys* is an adaptation of the Work, under s 10(1) of the 1968 Act, as, *inter alia*,
14 it is a dramatization of the Work.

15 282. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals,
16 and Jersey Boys Broadway, have infringed Plaintiff’s copyrights in the Work, directly, and
17 indirectly, under Sections 36, 39, and/or 101 of the 1968 Act, by, *inter alia*, entering into agreements
18 among themselves and with others, authorizing themselves and/or others to copy from and adapt the
19 Work for *Jersey Boys*; to perform this adaptation worldwide, including in Australia; to arrange for
20 and promote performances of this adaptation of the Work in places of public entertainment therein;
21 to communicate excerpts from this adaptation by electronic transmissions therein; and, to otherwise
22 deal with rights in the Work reserved exclusively to copyright owners under Section 31(1) of the
23 1968 Act, all in the absence of Plaintiff’s consent, and, notwithstanding their awareness of Plaintiff’s
24 co-ownership of the copyright in the Work.

25 283. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
26 Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, for their acts
27 of direct and indirect copyright infringement under Australian law, pursuant to, *inter alia*, Section
28 115(2) of the 1968 Act.

1 284. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
2 McAnuff, DSHT, Dodger Theatricals, and Jersey Boys Broadway, or an accounting of profits
3 therefrom, for their acts of Australian copyright infringement, under s 115(2) of the 1968 Act, in
4 amounts to be determined at trial, along with additional (exemplary or punitive) damages, under s
5 115(4) of the 1968 Act, due, *inter alia*, to the flagrancy of said Defendants' conduct in using,
6 adapting, and performing adaptations of the Work in Australia, and in authorizing others to do so,
7 in utter disregard for Plaintiff's co-ownership of the copyright therein; the direct benefits obtained
8 by said Defendants thereby, in the form of ongoing profits; and, the need to deter similar future acts
9 of copyright infringement thereby.

10 **WHEREFORE**, Plaintiff demands:

11 A. That the Court enter a Declaratory Judgment in favor of Plaintiff, and against
12 Defendant DeVito, decreeing as follows:

- 13 1. That the Work is a "joint work" under 17 U.S.C. § 101;
- 14 2. That Mr. Woodard was a co-author of the Work, and co-owner thereof, under
15 17 U.S.C. § 201(a);
- 16 3. That Mr. Woodard was a qualified copyright claimant with respect to the
17 Work, under 37 C.F.R. § 202.3(a)(3), when the Work was first fixed in a tangible medium of
18 expression;
- 19 4. That U.S. Reg. No. Txu 454 118 has been held in constructive trust by
20 Defendant DeVito, and must be supplemented, by Defendant DeVito or the Copyright Office, to
21 reflect Mr. Woodard's status as a co-author, co-owner, and copyright co-claimant;
- 22 5. That Plaintiff is an "author's widow" with respect to the Work, under 17
23 U.S.C. § 101;
- 24 6. That Plaintiff inherited Mr. Woodard's ownership interest in the Work upon
25 his death under 17 U.S.C. § 201(d)(1), and is a co-owner thereof with Defendant DeVito, holding
26 an indivisible fifty (50%) percent ownership interest therein;
- 27 7. That Plaintiff is eligible and entitled to record, with the United States
28 Copyright Office, her status as heir and successor to Mr. Woodard's interests in the Work, under 17

1 U.S.C. § 205;

2 8. That Plaintiff may publish and otherwise exploit the Work, independently of
3 Defendant DeVito, and enjoy, exercise, and enforce all other rights, benefits, and causes of action
4 accorded to copyright owners with respect thereto;

5 9. That the “exclusive license” granted by Defendant DeVito to Defendants Valli
6 and Gaudio, in or around August 1999, was *void ab initio*, with no legal effect; or, alternatively,

7 10. That the “exclusive license” granted by Defendant DeVito to Defendants Valli
8 and Gaudio constituted an assignment of rights to said Defendants under 17 U.S.C. § 201(d)(2),
9 making them co-owners with Plaintiff thereof, holding collectively, a fifty (50%) percent interest
10 therein, but with no rights to further sublicense, assign, or otherwise transfer same, under 17 U.S.C.
11 § 201(d)(2);

12 B. That the Court order Defendant DeVito to render an accounting to Plaintiff of the
13 amounts owed under the parties’ December 1, 1988 letter agreement and by virtue of their status as
14 copyright co-owners;

15 C. That Judgment be entered against Defendant DeVito for a sum to be determined in
16 the accounting, together with prejudgment and post-judgment interest, as provided by law;

17 D. That Plaintiff be awarded direct damages, and foreseeable consequential damages,
18 in amounts to be determined through discovery, or at trial, resulting from Defendant DeVito’s
19 breaches of contract, together with prejudgment and post-judgment interest, as provided by law;

20 E. That Judgment be entered against Defendant DeVito for damages resulting from his
21 unjust enrichment, in an amount to be determined at trial, together with pre-judgment and post-
22 judgment interest, attorneys’ fees, and the costs of this action;

23 F. That a constructive trust be imposed on all of Defendant DeVito’s income arising from
24 or relating to the Work, including, but not limited to, income arising from the licensing or assignment
25 of rights therein for *Jersey Boys*;

26 G. That exemplary and/or punitive damages be assessed against Defendant DeVito,
27 pursuant to, *inter alia*, NEV. REV. STAT. § 42.001, in amounts to be determined at trial, for his breach
28 of the implied covenant of good faith and fair dealing in the performance of contractual obligations

1 in the presence of a special and confidential relationship, and his acts of fraud, fraudulent
2 concealment, and fraudulent conversion;

3 H. That the Court enter a Declaratory Judgment in favor of Plaintiff, and against
4 Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway, decreeing as
5 follows:

6 1. That the “exclusive license” encompassing the Work which Defendant DeVito
7 granted to Defendants Valli and Gaudio, on or about August 13, 1999, was void and invalid under
8 17 U.S.C. §§ 201(a) and (d)(2);

9 2. That all subsequent non-exclusive licenses, exclusive licenses, assignments,
10 leases, and/or transfers of said rights by Defendants Valli and Gaudio were void and invalid under
11 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses and/or assignments granted by
12 Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger
13 Theatricals, and the subsequent assignment from Defendant Dodger Theatricals to Defendant Jersey
14 Boys Broadway; and,

15 3. That Defendants Valli, Gaudio, DSHT Dodger Theatricals, and Jersey Boys
16 Broadway have no rights to use, reference, and/or adapt the Work; to reproduce the Work or distribute
17 copies thereof; to prepare derivative works based upon the Work; to perform the Work or adaptations
18 thereof; to authorize others to prepare derivative works based upon the Work; to license, sublicense,
19 lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work;
20 or to exercise, or authorize the exercise of, any right in the Work reserved to copyright owners under
21 17 U.S.C. §§ 106 and 201(d);

22 I. That, in the alternative, the Court enter a Declaratory Judgment in favor of Plaintiff,
23 and against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway,
24 decreeing as follows:

25 1. That the “exclusive license” encompassing the Work which Defendant DeVito
26 granted to Defendants Valli and Gaudio, on or about August 13, 1999, constituted an assignment of
27 Defendant DeVito’s share in the exclusive rights to prepare derivative works based upon the Work
28 in the media of, *inter alia*, theater, film, and television, resulting in the indivisible co-ownership of

1 these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a)
2 and (d)(2);

3 2. That, notwithstanding this “assignment,” Defendants Valli and Gaudio were
4 and remain prohibited from further licensing, sublicensing, leasing, or transferring the rights thereby
5 obtained, under 17 U.S.C. § 201(d)(2);

6 3. That all subsequent non-exclusive licenses, exclusive licenses, assignments,
7 leases, and/or transfers of said rights by Defendants Valli and Gaudio were and remain void and
8 invalid under 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses and/or assignments
9 granted by Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or
10 Dodger Theatricals, and the subsequent assignment by Defendant Dodger Theatricals to Defendant
11 Jersey Boys Broadway; and,

12 4. That Defendants DSHT, Dodger Theatricals, Jersey Boys Broadway, JB Viva
13 Vegas, have no rights to use, reference, and/or adapt the Work; to reproduce the Work or distribute
14 copies thereof; to prepare derivative works based upon the Work; to perform the Work or adaptations
15 thereof; to authorize others to prepare derivative works based upon the Work; to license, sublicense,
16 lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work;
17 or to exercise, or authorize the exercise of, any right in the Work reserved to copyright owners under
18 17 U.S.C. §§ 106 and 201(d);

19 J. That, in the alternative, the Court enter a Declaratory Judgment in favor of Plaintiff,
20 and against Defendants Valli, Gaudio, DSHT, Dodger Theatricals, and Jersey Boys Broadway,
21 decreeing as follows:

22 1. That the “exclusive license” encompassing the Work which Defendant DeVito
23 granted to Defendants Valli and Gaudio, on or about August 13, 1999, effected an assignment of his
24 entire share in the exclusive right to prepare derivative works based upon the Work, in the fields of,
25 *inter alia*, theater, film, and television, resulting in an indivisible co-ownership of these rights by
26 Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2);

27 2. That Defendants Valli’s and Gaudio’s May 1, 2004 transfer of the exclusive
28 rights in the Work obtained from Defendant DeVito as aforesaid, to Defendants DSHT and/or Dodger

1 Theatricals, constituted an assignment of Valli's and Gaudio's entire share in the exclusive right to
2 prepare derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
3 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants DSHT
4 and/or Dodger Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d); and,

5 3. That Defendant Dodger Theatricals' subsequent transfer of the exclusive rights
6 in the Work obtained from Defendants Valli, Gaudio, and/or DSHT, to Defendant Jersey Boys
7 Broadway was effective, and constituted an assignment of Dodger Theatricals' entire share in the
8 exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater,
9 film, and television, resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and
10 Defendant Jersey Boys Broadway (50%), under 17 U.S.C. §§ 201(a) and (d);

11 K. That the Court order Defendants Valli and Gaudio to render an accounting to Plaintiff
12 of all profits obtained from their use and exploitation of the Work, to the extent that Defendant
13 DeVito's August 13, 1999 "exclusive license" thereto is determined to constitute an assignment;

14 L. That the Court order Defendants DSHT, Dodger Theatricals, and Jersey Boys
15 Broadway, to render accountings to Plaintiff of all profits obtained from their use and exploitation
16 of the Work, to the extent that Defendant DeVito's August 13, 1999 "exclusive license" to
17 Defendants Valli and Gaudio is determined to constitute an assignment of rights, which may be
18 further transferred or assigned;

19 M. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger
20 Theatricals, Jersey Boys Broadway, JB Viva Vegas, Jersey Boys Records, Skunk, Getting Home,
21 their officers, agents, servants, affiliates, employees, attorneys and representatives, related companies,
22 and all those in privity or acting in concert therewith, be forthwith preliminarily and/or permanently
23 enjoined and restrained, from directly or indirectly infringing Plaintiff's copyrights in the Work in
24 any manner, including by copying, reproducing, and/or imitating the Work; distributing copies of the
25 Work; preparing and/or publishing derivative works based upon the Work; performing the Work, in
26 whole or in part; performing derivative works based upon the Work, and/or authorizing third parties
27 to engage in such activities; and, preliminarily and permanently enjoined from continuing the
28 ongoing, nationwide and foreign productions of the musical production, *Jersey Boys*, and the

1 distribution and sale of the *Jersey Boys Cast Recording* and *Jersey Boys Book*, until such time as all
2 infringing material has been removed;

3 N. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger
4 Theatricals, Jersey Boys Broadway, JB Viva Vegas, Jersey Boys Records, Skunk, and Getting Home
5 be required to account for all gains, profits and advantages derived from, or caused by, each of their
6 direct infringements, willful infringements, vicarious infringements, and/or contributory
7 infringements of Plaintiff's copyrights in the Work, and pay to Plaintiff such damages as Plaintiff has
8 sustained in consequence of each infringement thereof, plus any additional profits resulting from the
9 infringements, under 17 U.S.C. § 504(b), or such other damages as to this Court may appear proper
10 within the provisions of the Copyright Law, including statutory damages in lieu of actual damages,
11 if elected by Plaintiff under 17 U.S.C. § 504(c), and enhanced damages for Defendants' willful
12 infringements, under 17 U.S.C. § 504(d);

13 O. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger
14 Theatricals, Jersey Boys Broadway, JB Viva Vegas, and Jersey Boys Records be required to pay
15 Plaintiff's attorneys' fees and the costs of this action under 17 U.S.C. § 505;

16 P. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger
17 Theatricals, Jersey Boys Broadway, JB Viva Vegas, Jersey Boys Records, Skunk, and Getting Home,
18 be ordered to deliver up on oath, for impoundment and destruction, any and all infringing articles,
19 under 17 U.S.C. § 503, including but not limited to scripts, manuscripts, drafts, books, records,
20 compact discs, and other items which include material taken or adapted from the Work;

21 Q. That the Court impose a constructive trust on all gains and profits realized by
22 Defendants Valli, Gaudio, Brickman, Elice, McAnuff, David, DSHT, Dodger Theatricals, Jersey
23 Boys Broadway, JB Viva Vegas, Jersey Boys Records, Skunk, and Getting Home, as a direct or
24 indirect result of their acts of infringement, including, but not limited to, gains and profits realized
25 from performances of *Jersey Boys* throughout the United States and abroad; and,

26 R. That the Court provide Plaintiff with such other and further relief as the Court deems
27 just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED:

DONNA CORBELLO, PLAINTIFF

February 16, 2011

By : /s/ Gregory H. Guillot

Gregory H. Guillot

John L. Krieger

George L. Paul

Robert H. McKirgan

Her Attorneys

CERTIFICATE OF SERVICE

I, Gregory H. Guillot, do hereby certify that a true and correct copy of the foregoing document was served, by CM/ECF on this 18th day of March, 2011, upon each of the following:

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